26947

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 238.

JEFFERSON B. CONLEY, PLAINTIFF IN ERROR,

vs.

THE MATHIESON ALKALI WORKS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 14, 1910.

(16,400.)

26974

(18,400.)

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COPY BOUND CLOSE IN CENTER

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Jefferson B. Conley, plaintiff in error, and The Mathieson Alkali Works, defendant in error, a manifest error hath happened to the great damage of the said Jefferson B. Conley, as is said and appears by his complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the United States Supreme Court, at the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 27th day of February, 1902, that the record and proceedings aforesaid being inspected, the said justices of the United States Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Seal of U. S. Circuit Court, South. Dist. New York.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 5th day of February in the year of our Lord one thousand nine hundred and two and of the Independence of the United States the one hundred and twenty-sixth.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

2 [Endorsed:] The U. S. circuit court of appeals for the second circuit. Jefferson B. Conley, plaintiff in error, *vs.* The Mathieson Alkali Works, defendant in error. Writ of error. MacFarland, Taylor & Costello, attorney- for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this — day of ——, 1902. —— ——, attorney for defendant in error.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify, that the following pages, numbered from 1 to 245 inclusive, contain a true and complete transcript of the

record and proceedings had in said court in the cause of Jefferson B. Conley plaintiff in error, against The Mathieson Alkali Works defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York in the southern district of New York, in the second circuit, this eleventh day of February in the year of our Lord one thousand nine hundred and two and of the Independence of the United States the one hundred and twenty-sixth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

3 *Allowance of Writ.*

The foregoing writ is hereby allowed upon the petition of the plaintiff to review the question of jurisdiction in said petition mentioned, which is hereby certified to be the only question arising herein.

E. HENRY LACOMBE, *U. S. C. J.*

4 [Endorsed:] E. & A. B. 1908 United States Supreme Court. Jefferson B. Conley, plaintiff in error *vs.* The Mathieson Alkali Works, defendant in error. Writ of error. MacFarland Taylor & Costello, attorneys for plaintiff in error, 63 Wall street New York city. Service this day of a copy of the within is admitted Feb'y 5 1902 Dated, N. Y., ——, 190– Agar Ely & Fulton appearing specially only for def't U. S. circuit court southern district New York. Filed Feb. 5 1902 John A. Shields, clerk.

5 United States Circuit Court, Southern District of New York

JEFFERSON B. CONLEY, Plaintiff in Error,
against
THE MATHIESON ALKALI WORKS, Defendant in Error.

To the honorable justices of the Supreme Court of the United States:

Now comes the above-named plaintiff by his attorneys, and complains that in the record and proceedings had in said cause, and also in the rendition of the order s-tting aside the service of the summons in the said United States circuit court for the southern district of New York, on the twenty-first day of January, 190 manifest error hath happened to the great damage of the plaintiff in that the court thereby determined that it had no jurisdiction of the defendant.

Wherefore said plaintiff prays for the allowance of a writ of error to review the said order and decision in favor of the defendant, and against the plaintiff, on the question of the jurisdiction of the court thereby determined; and for such other orders and process as may

cause the same to be corrected by the said Supreme Court of the United States.

MACFARLAND, TAYLOR & COSTELLO,
Plaintiff's Attorneys, # 63 Wall Street,
New York City, Borough of Manhattan.

6 (Endorsed:) United States circuit court, southern district of New York.—Jefferson B. Conley, plaintiff in error, *vs.* The Mathieson Alkali Works, defendant in error.—Petition for writ of error.—MacFarland, Taylor & Costello, attorneys for plaintiff, 63 Wall street, New York city.—U. S. circuit court, southern district of New York, Filed Feb. 5, 1902, John A. Shields, clerk.

7 Supreme Court, New York County.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

To the supreme court of the State of New York:

The petition of the Mathieson Alkali Works appearing herein for the sole and single purpose of presenting its petition to this honorable court of the United States for the southern district of New York, respectfully shows to this court:

I. That your petitioner is the defendant above named and that the time within which said defendant is required by the laws of the State of New York, to answer or plead to the complaint herein has not expired.

II. That the matter in dispute exceeds, exclusive of interest and costs the sum of two thousand dollars ($2,000).

III. That the only controversy in the said action is between citizens of different States.

IV. That the plaintiff was at the beginning of this action, — is now a citizen of the State of New York and resides in the county of New York. That the said Thomas Train Mathieson named in the complaint was at all the times mentioned in the complaint, and is now a citizen and resident of the Kingdom of Great Britain.

V. That your petitioner was at the commencement of this action, and still is a corporation duly organized and existing under and by
8 virtue of the laws of the State of Virginia, and a citizen of said State, having its headquarters and principal office and place of business and works located at Saltville in said State of Virginia.

VI. That in this action the only controversy is between the said plaintiff and said Thomas Train Mathieson on one side, and the defendant your petitioner on the other, as will more fully and at large appear by the complaint a copy of which with summons is attached hereto, as a part hereof and filed herewith.

VII. Your petitioner further shows that the only parties to the said action are Jefferson B. Conley, named as plaintiff in said action and The Mathieson Alkali Works, named as defendant in said ac

tion. But your petitioner upon information and belief shows and alleges to be true that the said Thomas Train Mathieson mentioned in the complaint, and a citizen and resident of the Kingdom of Great Britain, was at the beginning of this action and is now the only real party in interest, and that said plaintiff, Jefferson B. Conley has no interest in the subject-matter of the controversy, and is simply a nominal and fictitious party.

VIII. And your petitioner offers herewith a bond with good and sufficient surety for its entering into the circuit court of the United States for the southern district of New York on or before the first day of its next session, *and* a copy of the record in such suit and for paying all costs that may be awarded by the said circuit court, if the said court shall hold that such action was wrongfully or improperly removed thereto.

And your petitioner prays this honorable court to proceed no further herein except to make this order of removal required by law, and to accept the said bond and to cause the record herein to be removed to the said circuit court of the United States in and for the southern district of New York.

9 And your petitioner will ever pray.

Dated May 4th, 1901.

THE MATHIESON ALKALI WORKS,
[SEAL.] By EDWARD E. ARNOLD, *President.*

AGAR, ELY & FULTON,
Attorneys for Petitioner, Appearing and for the Sole and Single Purpose of Presenting this Petition.

STATE OF RHODE ISLAND, } ss:
County of Providence, }

Edward E. Arnold, being duly sworn says that he is the president, and as such the chief executive officer of The Mathieson Alkali Works, the petitioner above named. That he has read the foregoing petition and knows the contents thereof, and that the same is true to his own knowledge, except as to matters -herein stated to be alleged on information and belief, and as to those matters he believes it to be true.

EDWARD E. ARNOLD.

Sworn to before me this 4th day of May, 1901.

NATHANIEL W. SMITH,
Notary Public.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } sc:
Providence, }

Office of the clerk of the appellate division of the supreme court in Providence.

[SEAL.] PROVIDENCE, *May 4th, A. D.* 1901.

I, Bertram S. Blaisdell, clerk of the appellate division of the supreme court of said State, in Providence, in the county of Provi-

dence, the same being a court of record, do hereby certify
10 that Nathaniel W. Smith, Esq., is a notary public in and for said State, and as such was, at the time of signing said certificate to the annexed instrument, duly appointed and qualified, and authorized to administer oaths and take depositions and the proof of acknowledgement of deeds and other instruments; that I am well acquainted with the handwriting of said notary public, and verily believes that the signature to the said certificate, purporting to be his, is genuine.

In attestation whereof I hereto subscribe my name and affix the seal of said appellate division of said court, the day and year above written.

BERTRAM S. BLAISDELL, *Clerk.*

10-cent revenue stamp cancelled.

11 Know all men by these presents, that we, The Mathieson Alkali Works, of Saltville, Virginia, as principal and R. T. Wilson and Francis Blossom, both of the city of New York, N. Y., as sureties, are held and firmly bound unto the plaintiff, Jefferson B. Conley, and to all other persons whom it may concern, in the penal sum of five hundred ($500) dollars, to which payment we bind ourselves our heirs, representatives and assigns, jointly and severally, firmly by these presents, yet upon these conditions:

The defendant, The Mathieson Alkali Works, having petitioned the supreme court of the State of New York, in the county of New York, for the removal of a certain cause therein pending, wherein the said Jefferson B. Conley is plaintiff, and said The Mathieson Alkali Works is defendant, to the circuit court of the United States for the southern district of New York:

Now, if said The Mathieson Alkali Works, and petitioner shall enter in the said circuit court of the United States for the southern district of New York, on the first day of its next session, a copy of the record in said action, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said cause was wrongfully and improperly removed thereto, and shall do and cause to be done such other and appropriate acts as are required pursuant to the statutes of the United States in such case made and provided, then this application to be void; otherwise to remain in full force and effect.

Witness our hands and seals this 4th day of May, 1901.

[Seal M. A. W'ks.]

THE MATHIESON ALKALI WORKS,
By EDWARD E. ARNOLD, *President.*
R. T. WILSON. [SEAL.]
FRANCIS BLOSSOM. [SEAL.]

12 STATE OF RHODE ISLAND, } ss:
County of Providence, }

On this 4th day of May, 1901, before me personally appeared Edward E. Arnold, to me known to be the individual described in and

who executed the foregoing instrument, and severally acknowledged to me that *they* executed the same; and the said Edward E. Arnold acknowledged to me that he executed the said instrument as president of the said The Mathieson Alkali Works of Saltville, Virginia, and that he was duly authorized to execute the said bond as principal as and for the act and deed of said The Mathieson Alkali Works of Saltville, Virginia.

NATHANIEL W. SMITH,
Notary Public.

[NOTARIAL SEAL.]

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } *ss:*
Providence, }

Office of the clerk of the appellate division of the supreme court in Providence.

PROVIDENCE, *May 4th, A. D.* 1901.

I, Bertram S. Blaisdell, clerk of the appellate division of the supreme court of said State, in Providence, in the county of Providence, the same being a court of record,

Do hereby certify that Nathaniel W. Smith, Esq., is a notary public in and for said State, and as such was, at the time of signing said certificate to the annexed instrument, duly appointed and qualified, and authorized to administer oaths and take depositions and the proof or acknowledgement of deeds and other instruments; that I am well acquainted with the handwriting of said notary public and verily believe that the signature to the said certificate, purporting to be his, is genuine.

13 In attestation whereof I hereto subscribe my name, and affix the seal of said appellate division of said court, the day and year above written.

BERTRAM S. BLAISDELL, *Clerk.*

(10-cent revenue stamp, cancelled.)

STATE OF NEW YORK, } *ss:*
County of New York, }

R. T. Wilson, being duly sworn, says: that he is surety above named; that he resides at 511 Fifth avenue, Manhattan, New York city, in the State of New York and is a freeholder in the State of New York and worth the sum of one thousand dollars over all the debts or liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

R. T. WILSON.

Sworn to before me this 7th day of May, 1901.

EDWARD A. FRESHMAN,
Notary Public, New York County.

[NOTARIAL SEAL.]

STATE OF NEW YORK, }
County of New York, } ss:

Francis Blossom, being duly sworn, says: that he is surety above named; that he resides at 183 Columbian Heights, Brooklyn, in the city of New York, New York, and is a householder in the State of New York, and worth the sum of one thousand dollars over all the debts or liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

FRANCIS BLOSSOM.

Sworn to before me this 8th day of May, 1901.

EDWARD A. FRESHMAN,
[SEAL.] *Notary Public, New York County.*

14 STATE OF NEW YORK, }
County of New York, } ss:

On the 7th day of May, 1901, before me personally appeared R. T. Wilson, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for the purposes therein stated. And on the 8th day of May, 1901, before me personally appeared Francis Blossom, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for the purposes therein stated.

EDWARD A. FRESHMAN,
Notary Public, New York County.

The within bond approved as to form and sufficiency of sureties the 8th day of May, 1901.

H. A. GILDERSLEEVE,
Justice Supreme Court.

Please take notice that within is a copy of a bond, this day duly approved in the within-entitled action by Mr. Justice Gildersleeve and this day filed in the office of the clerk of the county of New York, and that upon said bond and the petition herein of the defendant also duly filed in said clerk's office at the same time, said cause has been removed to the United States circuit court for the southern district of New York.

Dated New York, May 8, 1901.

Yours, &c.,

AGAR, ELY & FULTON,
Attorneys, &c., Appearing Specially Only.

15 To MacFarland, Taylor & Costello, attorneys for plaintiff, No. 63 Wall St.

Supreme Court, New York County.

JEFFERSON B. CONLEY, Plaintiff,
vs.
THE MATHIESON ALKALI WORKS, Defendant.

Affidavit of Service of Summons and Complaint.

COUNTY OF NEW YORK, *ss:*

John C. Lowe, being duly sworn, says, that he is 27 years of age. And that on the 18th day of April, 1901, at 31 Nassau street he served the summons and complaint in this action, hereto annexed, upon John G. Agar, a director of The Mathieson Alkali Works, defendant in this action, by delivering a true copy of said summons and complaint to such director personally, and leaving the same with him. He further says, that he knew the person served as aforesaid to be John G. Agar, director of The Mathieson Alkali Works mentioned and described in the said summons as the defendant in this action.

JOHN C. LOWE.

Sworn to before me, this 18th day of April, 1901.

WILLARD C. TAYLOR,
Notary Public, N. Y. Co.

16 Supreme Court, New York County.

JEFFERSON B. CONLEY, Plaintiff,
vs.
THE MATHIESON ALKALI WORKS, Defendants.

Affidavit of Service of Summons and Complaint.

COUNTY OF NEW YORK, *ss:*

John C. Lowe, being duly sworn, says that he is 27 years of age. And that on the 18th day of April, 1901, at 33 Wall street, he served the summons and complaint in this action, hereto annexed, upon Richard T. Wilson, director of The Mathieson Alkali Works, defendant in this action, by delivering a true copy of said summons and complaint to such director personally, and leaving the same with him. He further says that he knew the person served as aforesaid to be R. T. Wilson, director of The Mathieson Alkali Works, mentioned and described in the said summons as the defendant in this action.

JOHN C. LOWE.

Sworn to before me, this 18th day of April, 1901.

WILLARD C. TAYLOR,
Notary Public, N. Y. Co.

17 Supreme Court, New York County.

JEFFERSON B. CONLEY, Plaintiff,
vs.
THE MATHIESON ALKALI WORKS, Defendant. } Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated March 15, 1901.

MACFARLAND, TAYLOR & COSTELLO,
Plaintiff's Attorneys.

Office and post-office address, No. 63 Wall street, New York city, N. Y.

18 Supreme Court, New York County.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

The plaintiff above named complains of the defendant and alleges:

First. That the defendant above named is a corporation organized and existing under the laws of the State of Virginia; that the business of the said corporation is the manufacture and sale of alkali. That the said corporation has its office and place of business in the city, county and State of New York, and carries on its business under the laws of the said State.

Second. On the 15th day of August, 1893, the said defendant and Thomas Train Mathieson at the said city of New York, made and entered into a contract of the tenor following, that is to say:

"These articles of agreement made and entered into by and between the Mathieson Alkali Works, a corporation existing under the laws of the State of Virginia, with headquarters located at Saltville, in said State, party of the first part, and T. T. Mathieson, party of the second part, witnesseth as follows:

"1st. The said Mathieson Alkali Works have employed the said Mathieson as general superintendent for the term of eight years, upon the terms and conditions hereinafter stated. That is to say, the said T. T. Mathieson is to give his time and attention for either two or three years, as he may elect, to the erection and gen-
19 eral management of the works of the said company, and also to their operation after the same shall have been erected. It being understood and agreed during this term of either two or three years, as the case may be the said Mathieson is to remain and be present at such places in the United States as the business of the

company may require, principally at Saltville, except that he is to have such vacation during this period as can be availed of, without detriment or hinderance to the proper management of the business of the said company, and for this period of two or three years, as the case may be, he is to be paid at the rate 3,000 pounds sterling per annum, payments therefor being made in monthly instalments.

"2nd. For the remainder of the unexpired term of eight years, the said Mathieson is to be paid 1,500 pounds sterling per annum, and during this unexpired portion of the period of eight years, it is understood that the said Mathieson shall not be required to spend any more time in America than he may elect to spend. The object and purpose however, being that he shall give such attention to the business as may be necessary, in order to promote its best interests.

"3rd. The Mathieson Alkali Works agree to pay the said Mathieson during the full period of the eight years, a commission at the rate of 5 % per annum upon all net profits realized by the Mathieson Alkali Works over and above 60,000 pounds sterling per annum.

"4th. The above compensation is to give the said Mathieson Alkali Works the ownership for the United States an- exclusive right to use any patents or any interest in any patents which the said Mathieson may now own or which he may hereafter perfect or acquire, during the period of this contract.

"The Mathieson Alkali Works further agree that they will provide a suitable residence for the said T. T. Mathieson at the works at Saltville, Virginia, during said period of eight years or such portion as the said T. T. Mathieson shall elect to reside at Saltville, Virginia.

"The Mathieson Alkali Works further agree that the said T. T. Mathieson has the option to purchase $100,000 worth of the company's stock at par, with interest at the rate of 5 % per annum added, from the average date of payment of the subscribers to the stock of said Mathieson Alkali Works, at any time he may elect to do so during the period of the first three years of his employment, and the company agrees to reserve the said shares for the said T. T. Mathieson during the said period.

"The said Mathieson agrees that he will not enter into any similar business in the United States of America during the continuance of this agreement.

"The salary of the said T. T. Mathieson is hereby declared to begin from the 1st day of February, 1893.

"In witness whereof, the said Mathieson Alkali Works has caused this agreement to be signed by its president and attested by its secretary and its corporate seal attached hereto, and the said T. T. Mathieson has signed the same.

"Executed in duplicate on this fifteenth day of August, 1893.

MATHIESON ALKALI WORKS,
(S'g'd) By EDWARD E. ARNOLD, *President*,
(") T. T. MATHIESON.

In presence of—
(S'g'd) J. F. VAN WARDLE.
(") J. HELNGRAM.
(") M. P. ROBERTSON, *Sec'y*."

21 Third. The said Thomas Train Mathieson duly performed all and singular the acts and things by him to be done and performed according to the terms of the said agreement.

Fourth. The plaintiff alleges upon information and belief that there is due from the defendant as and for the balance of the salary and compensation of the said Mathieson, under and by virtue of the said agreement and the performance thereof, as aforesaid the sums of—

$625.00	with	interest	thereon	from	Sep. 1st 1896
625.00	"	"	"	"	Nov. 1st 1896
625.00	"	"	"	"	Nov. 1st 1896
625.00	"	"	"	"	Dec. 1st 1896
625.00	"	"	"	"	Jan. 1st 1897
625.00	"	"	"	"	Feb. 1st 1897
625.00	"	"	"	"	Mar. 1st 1897
625.00	"	"	"	"	Ap'l 1st 1897
625.00	"	"	"	"	May 1st 1897
625.00	"	"	"	"	June 1st 1897
625.00	"	"	"	"	July 1st 1897
625.00	"	"	"	"	Aug. 1st 1897
625.00	"	"	"	"	Sep. 1st 1897
625.00	"	"	"	"	Oct. 1st 1897
625.00	"	"	"	"	Nov. 1st 1897
625.00	"	"	"	"	Dec. 1st 1897
625.00	"	"	"	"	Jan. 1st 1898
625.00	"	"	"	"	Feb. 1st 1898
625.00	"	"	"	"	Mar. 1st 1898
625.00	"	"	"	"	Ap'l 1st 1898
625.00	"	"	"	"	May 1st 1898
625.00	"	"	"	"	June 1st 1898
625.00	"	"	"	"	July 1st 1898
625.00	"	"	"	"	Aug. 1st 1898
625.00	"	"	"	"	Sep. 1st 1898
625.00	"	"	"	"	Oct. 1st 1898
625.00	"	"	"	"	Nov. 1st 1898
625.00	"	"	"	"	Dec. 1st 1898
625.00	"	"	"	"	Jan. 1st 1899
625.00	"	"	"	"	Feb. 1st 1899
625.00	"	"	"	"	Mar. 1st 1899
625.00	"	"	"	"	Ap'l 1st 1899
625.00	"	"	"	"	May 1st 1899
625.00	"	"	"	"	June 1st 1899
625.00	"	"	"	"	July 1st 1899
625.00	"	"	"	"	Aug. 1st 1899
625.00	"	"	"	"	Sep. 1st 1899
625.00	"	"	"	"	Oct. 1st 1899
625.00	"	"	"	"	Nov. 1st 1899
625.00	"	"	"	"	Dec. 1st 1899
625.00	"	"	"	"	Jan. 1st 1900
625.00	"	"	"	"	Feb. 1st 1900

625.00 with interest thereon from Mar. 1st 1900
625.00 " " " " Apr. 1st 1900
625.00 " " " " May 1st 1900
625.00 " " " " June 1st 1900
625.00 " " " " July 1st 1900
625.00 " " " " Aug. 1st 1900

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625.00 with interest thereon from Sep. 1st 1900
625.00 " " " " Oct. 1st 1900
625.00 " " " " Nov. 1st 1900
625.00 " " " " Dec. 1st 1900
625.00 " " " " Jan. 1st 1901
625.00 " " " " Feb. 1st 1901.

Fifth. On the 12th day of October, 1900, the said Mathieson by an instrument in writing duly assigned and transferred the debt then due to him by the defendant, and all sums thereafter to become due under the said contract in respect of salary and compensation, and the cause of action therefor, and the plaintiff is now the assignee and owner thereof. The plaintiff is a citizen of the State of New York, and resides in the county of New York.

For a second and separate cause of action, the plaintiff alleges:

First. The agreement between the defendant and the said Mathieson above set forth contains the following provision:

"The Mathieson Alkali Works agree to pay the said Mathieson during the full period of the eight years, a commission at the rate of 5 % per annum upon all net profits realized by the Mathieson Alkali Works over and above 60,000 pounds sterling per annum."

Upon information and belief the plaintiff alleges that under and by virtue of the above provision of the said agreement in respect of such net profits as therein mentioned realized by the defendant a large sum of money, to wit: one thousand dollars, ($1000) and upwards, is due the plaintiff but the precise amount so due, the plaintiff is unable to state, for the reason that the defendant at all times heretofore has and still does neglect and refuse to render any account of such net profits.

Second. On the said 12th day of October, 1900, the said Mathieson by an instrument in writing duly assigned and transferred his claim, demand and cause of action in respect of such commission and
23 net earnings to the plaintiff, who is now the assignee and owner thereof.

Wherefore, the plaintiff demands judgment against the defendant for the sum of thirty-three thousand seven hundred and fifty dollars ($33750) so due and payable as aforesaid in respect to salary and compensation under and by virtue of the said agreement together with interest thereon calculated from the date when the several instalments for salary became due and payable, that is to say, the sum of

$625.00	with	interest	from	Sept. 1st. 1896
625.00	"	"	"	Oct. 1st. 1896
625.00	"	"	"	Nov. 1st. 1896
625.00	"	"	"	Dec. 1st. 1896
625.00	"	"	"	Jan. 1st. 1897
625.00	"	"	"	Feb. 1st. 1897
625.00	"	"	"	Mar. 1st. 1897
625.00	"	"	"	Apr. 1st. 1897
625.00	"	"	"	May 1st. 1897
625.00	"	"	"	June 1st. 1897
625.00	"	"	"	July 1st. 1897
625.00	"	"	"	Aug. 1st. 1897
625.00	"	"	"	Sep. 1st. 1897
625.00	"	"	"	Oct. 1st. 1897
625.00	"	"	"	Nov. 1st. 1897
625.00	"	"	"	Dec. 1st. 1897
625.00	"	"	"	Jan. 1st. 1898
625.00	"	"	"	Feb. 1st. 1898.
625.00	"	"	"	Mar. 1st. 1898
625.00	"	"	"	Apr. 1st. 1898
625.00	"	"	"	May 1st. 1898
625.00	"	"	"	June 1st. 1898
625.00	"	"	"	July 1st. 1898
625.00	"	"	"	Aug. 1st. 1898
625.00	"	"	"	Sep. 1st. 1898
625.00	"	"	"	Oct. 1st. 1898
625.00	"	"	"	Nov. 1st. 1898
625.00	"	"	"	Dec. 1st. 1898
625.00	"	"	"	Jan. 1st. 1899
625.00	"	"	"	Feb. 1st. 1899
625.00	"	"	"	Mar. 1st. 1899
625.00	"	"	"	Apr. 1st. 1899
625.00	"	"	"	May 1st. 1899
625.00	"	"	"	June 1st. 1899
625.00	"	"	"	July 1st. 1899
625.00	"	"	"	Aug. 1st. 1899
625.00	"	"	"	Sep. 1st. 1899
625.00	"	"	"	Oct. 1st. 1899
625.00	"	"	"	Nov. 1st. 1899
625.00	"	"	"	Dec. 1st. 1899
625.00	"	"	"	Jan. 1st. 1900
625.00	"	"	"	Feb. 1st. 1900
625.00	"	"	"	Mar. 1st. 1900
625.00	"	"	"	Apr. 1st. 1900
625.00	"	"	"	May 1st. 1900
625.00	"	"	"	June 1st. 1900
625.00	"	"	"	July 1st. 1900
625.00	"	"	"	Aug. 1st. 1900

24

$625.00 with interest from Sep. 1st. 1900
625.00 " " " Oct. 1st. 1900
625.00 " " " Nov. 1st. 1900
625.00 " " " Dec. 1st. 1900
625.00 " " " Jan. 1st. 1901
625.00 " " " Feb. 1st. 1901;

and further the plaintiff demands judgment for an accounting as to the net profits received by the defendant in which the plaintiff has an interest, as set forth in the above and foregoing second cause of action, and for the sum of money that may be found due on such accounting, and also for the costs of this action.

MACFARLAND, TAYLOR & COSTELLO,
Attorneys for Plaintiff, 63 Wall Street, New York City.

25 CITY OF NEW YORK, }
County of New York, } *ss:*

Jefferson B. Conley, being duly sworn, says that he is the plaintiff herein, that he has heard read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

JEFFERSON B. CONLEY.

Sworn to before me this 15th day of March, 1901.

FRANK H. CURRY,
Commissioner of Deeds in and for the City of New York.

STATE OF NEW YORK, }
County of New York, } *ss:*

I, William Sohmer, clerk of the said county, and clerk of the supreme court of said State for said county, do certify, that I have compared the preceding with the original record on removal to U. S. court, Jefferson B. Conley *vs.* The Mathieson Alkali Works, filed May 8th, 1901, on file in my office, and that the same is a correct transcript therefrom, and the whole of such original.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 22nd day of May, 1901.

[SEAL.] WM. SOHMER, *Clerk.*

26 (Endorsed:) Supreme court, New York county. Jefferson B. Conley, plaintiff, *vs.* The Mathieson Alkali Works, defendant. Record on removal. McFarland, Taylor and Costello, attorneys for plaintiff, 63 Wall St. New York city. U. S. circuit court, Filed May 22, 1901, John A. Shields, clerk.

27 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Respondent. } Order to Show Cause.

On reading the annexed affidavit of Alfred Ely, attorney and counsellor at law, and one of the attorneys appearing specially herein on behalf of the defendant for the sole purpose of applying to this court for an order setting aside the summons in this action and the service thereof on the defendant, alleged to have been made as specified in the affidavit hereto annexed, and on the said summons and complaint and petition for removal and upon all the proceedings herein, it is

Ordered that the said Jefferson B. Conley, or his attorneys, show cause before this court at the United States court-house in the city of New York borough of Manhattan on Friday the 31st day of May, 1901, at 11 o'clock in the forenoon or as soon thereafter as counsel can be heard, why the said summons and the service thereof should not be set aside and declared to be null and void and that defendant have leave to file further affidavits in support of this motion upon the hearing hereof, copies thereof to be served upon the plaintiff's attorneys at least two days in advance of such hearing; in the meantime let all proceedings herein by plaintiff be and they hereby are stayed.

Further ordered, that the defendant's time to enter a general appearance in the above action in this court and to answer or
28 demur or plead to the complaint herein or to make such motion or to take such other action with respect thereto as it may be advised be and it hereby is extended for a period of twenty days after the hearing and determining of the said application to set aside the summons in this action and the service thereof, as aforesaid, and after the entry of such order as may be made by the court thereupon.

Further ordered, that service of a copy of this order to show cause on said plaintiff or his attorneys on or before the 24th day of May, 1901, shall be deemed sufficient service thereof.

Granted May 23, 1901.

(Signed) EDWARD B. THOMAS, *U. S. J.*

29 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Respondent.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

Alfred Ely, being duly sworn, says: I am an attorney and counsellor at law of the supreme court of the State of New York, and duly admitted to practice in this court, and am one of the law firm of Agar, Ely & Fulton, duly retained by the defendant in the above-

entitled matter. I am and for more than five years last past have been one of the attorneys and general counsel for the defendant and am personally familiar with its affairs.

Upon information and belief that on April 18, 1901, a copy of certain papers purporting to be a summons and complaint entitled in an action in the supreme court of the State of New York, county of New York, wherein the above-named Jefferson B. Conley was named as plaintiff and the above-named The Mathieson Alkali Works, a corporation of the State of Virginia, was named defendant, were handed to one Richard T. Wilson, a banker, at his personal office, No. 33 Wall street, New York city; that at that time
30 said Wilson was not an officer of the defendant company and never had been; that also on said April 18, a similar paper purporting to be a copy of summons and complaint entitled as aforesaid, was handed to John G. Agar, Esq., counsellor-at-law, and one of deponent's said law firm of Agar, Ely & Fulton, at his law office, No. 21 Nassau street, New York city; that said Agar was not at the time and never has been an officer of the defendant corporation. That the delivery of such papers to said Wilson and to said Agar, or to one of them, is claimed by the plaintiff to have been service of the summons and complaint upon the defendant.

I further say that said The Mathieson Alkali Works, named as defendant, is a corporation of the State of Virginia, and is and for upwards of eight years has been engaged in the manufacture of alkali, salt and heavy chemicals, at Saltville, in the State of Virginia, where it has and has had its works, plant, principal office and place of business. Said corporation was not on said April 18, 1901, and is not engaged in business in the State of New York. On said April 18, and for several months prior thereto, it had no place of business within the State of New York, no property within the State of New York, no office within the State of New York, nor any agent or officer of said corporation resident within the State. The main office and place of business of said defendant is and always has been at Saltville, in the State of Virginia, where it has very extensive property and plant for the manufacture of salt and heavy chem-
31 icals; its only other office and place of transacting business is and always has been at Providence, in the State of Rhode Island, where its president, secretary, treasurer and executive officers, outside of Virginia, reside and transact its business.

For about two or three years prior to December 31, 1900, the defendant had a manufacturing plant at Niagara Falls, in the State of New York, where it was engaged in manufacturing caustic soda and bleach by certain electrical processes, and in connection with this plant, and prior to December 31, 1900*1*, it had a works' office at Niagara Falls for the purpose only of attending to the details connected with the manufacturing operations there conducted. There was not at any time an office of the company for the general transaction of the business at Niagara Falls. The plant and all property of said The Mathieson Alkali Works, of every kind and description within the State of New York, was about December 31, 1900, sold by it for full value and delivered to the Castner Electrolytic Alkali

Company and thereupon the defendant, The Mathieson Alkali Works, retired absolutely and wholly from the State of New York, and since that time has had no property or office and had not been within the State of New York. This sale and transfer was under negotiations for a period of several months prior to its consummation, and was finally concluded about December 31, 1900, as aforesaid, and the actual delivery had within a few days thereafter.

On the 8th day of May, 1901, said defendant appearing specially by its said attorneys for the sole and single purpose of having
32 the above-entitled cause removed to the United States circuit court for the southern district of New York under the provision of the act of Congress in such case made and provided, duly presented and filed its petition to said supreme court of the State of New York, in the county of New York, for the purpose of said removal with the requisite bond with sufficient surety, which was duly proved by a justice of the New York supreme court, and thereupon said cause was removed into this United States circuit court for the southern district of New York.

Said defendant did not appear generally in said New York supreme court in said action claimed to have been commenced in said supreme court, but appeared specially for the sole and single purpose of presenting its said petition and obtaining a removal of said cause to this court, as will more fully appear by a reference to said petition, a copy of which is hereto annexed.

Upon information and belief that a certified copy of a record of said action alleged to have been commenced in the New York supreme court as aforesaid, was duly filed in this court on the 23rd day of May, 1901, and this defendant has now entered its special appearance by its said attorneys for the sole purpose of applying to this court for an order setting aside said summons and the alleged service thereof claimed to have been made, as aforesaid, upon said Richard T. Wilson and John G. Agar, on the ground that such service is under the laws of the United States and the decisions of the Federal courts, of no force and effect as against the defendant
33 corporation, and utterly void, and gave no jurisdiction over this defendant to proceed further in the matter.

To this end, an order to show cause is desired on behalf of said defendant corporation now appearing specially for such purpose only, directing the plaintiff, or his attorneys to show cause before this court, at an early day, why the summons in this action and the service thereof so alleged to have been made, should not be set aside as wholly illegal and void and of no effect.

In behalf of said defendant corporation, it is also desired that the time of said defendant to enter a general appearance in this action, and to take any further proceeding herein by way of plea or motion in this court, with respect to the complaint or otherwise, be extended as to the court may seem best.

I further say that defendant's time to file a certified copy of the record of this action in the New York supreme court and to answer or move with respect to the alleged complaint herein, would not have expired until the first day of the next session of this court,

which would be June 3, 1901. I am informed by notice from plaintiff's attorneys that nevertheless the certified copy of the record has been this day filed by the plaintiff, and defendant's time to make this motion is thereby shortened so that its time to plea- or move will expire tomorrow, May 24, 1901. For this reason, the order to show cause now applied for is desired. No extension has been had herein & no other application for the relief now asked has been heretofore made.

I further say that the executive officer of the defendant company is Edward E. Arnold, its president and manager who resides
34 and now is and has been always a citizen of the city of Providence, Rhode Island, where he is regularly and daily in attendance at the office of the defendant there for the purpose of transacting its business. That the secretary and treasurer is John R. Gladding, who is also and for many years has been a citizen and resident of the city of Providence, Rhode Island, where he is also regularly in attendance daily at the office of the defendant there, for the purpose of transacting its business; that it is impossible within the short time at my disposal to obtain any affidavits upon this motion from said officers, or from any of the agents of the defendant company prior to the application for the order to show cause. Leave is therefore asked to file additional affidavits by the officers of the company within such time before the hearing as to the court may seem best.

ALFRED ELY.

Sworn to before me this 23rd day of May, 1901.
[NOTARIAL SEAL.] EDWARD A. FRESHMAN,
Notary Public, New York County.

35 Supreme Court, New York County.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant. } Petition.

To the supreme court of the State of New York:

The petition of the Mathieson Alkali Works appearing herein for the sole and single purpose of presenting this, its petition, to this honorable court for the removal of the above-entitled cause to the circuit court of the United States for the southern district of New York, respectfully shows to this court:

I. That your petitioner is the defendant above named, and that the time within which said defendant is required by the laws of the State of New York to answer or to plead to the complaint herein has not yet expired.

II. That the matter in dispute exceeds, exclusive of interest and costs, the sum of $2000.

III. That the only controversy in said action is between citizens of different States.

IV. That the plaintiff was at the beginning of this action and is

now a citizen of the State of New York and resides in the county of New York; that Thomas Train Mathieson named in the complaint, was at all the times therein mentioned, and is now, a citizen and resident of the Kingdom of Great Britain.

V. That your petitioner was at the commencement of this action and still is a corporation duly organized and existing under
36 and by virtue of the laws of the State of Virginia, and a citizen of said State, having its headquarters and principal office, place of business and works located at Saltville in said State of Virginia.

VI. That in this action the only controversy is between the said plaintiff and said Thomas Train Mathieson on the one side, and the defendant, your petitioner, on the other, as will more fully and at large appear by the complaint, a copy of which is annexed hereto as part hereof and filed herewith.

VII. Your petitioner further shows that the only parties to the said action are Jefferson B. Conley, named as plaintiff in said action, and The Mathieson Alkali Works, named as defendant in said action. But your petitioner, upon information and belief shows and alleges it to be true, that said Thomas Train Mathieson mentioned in the complaint, and a citizen and resident of the Kingdom of Great Britain, was at the beginning of this action and is now the only real party in interest, and that said plaintiff, Jefferson B. Conley, has no interest in the subject-matter of said controversy and is merely a nominal and fictitious party.

VIII. And your petitioner offers herewith a bond with good and sufficient surety for its entering in the circuit court of the United States for the southern district of New York, on or before the first day of its next session, a copy of the record in such suit and for paying all costs that may be awarded by the said circuit court if the said court shall hold that such action was wrongfully or improperly removed thereto.

37 And your petitioner prays this honorable court to proceed no further herein except to make this order of removal required by law, and to accept the said bond and to cause the record herein to be removed to the said circuit court of the United States in and for the southern district of New York.

And your petitioner will ever pray.

Dated May 4th, 1901.

[Seal M. A. W'ks.]

THE MATHIESON ALKALI WORKS,
By EDWARD E. ARNOLD, *President.*

AGAR, ELY & FULTON,
Attorneys for Petitioner, Appearing Specially for and for the Sole and Single Purpose of Presenting this Petition.

38 STATE OF RHODE ISLAND, }
County of Providence, } ss:

Edward E. Arnold, being duly sworn, says that he is the president and as such the chief executive officer of The Mathieson Alkali

Works, the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

EDWARD E. ARNOLD.

Sworn to before me this 4th day of May, 1901.
NATHANIEL W. SMITH,
[NOTARIAL SEAL.] *Notary Public.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *ss:*

Office of the clerk of the appellate division of the supreme court in Providence.

[SEAL.]

PROVIDENCE, *May* 4, *A. D.* 1901.

I, Bertram S. Blaisdell, clerk of the appellate division of the supreme court of said State in Providence, in the county of Providence, the same being a court of record, do hereby certify that Nathaniel W. Smith Esq., is a notary public in and for said State, and as such was, at the time of signing said certificate to the annexed instrument, duly appointed and qualified, and authorized to administer oaths and take depositions and the proof or acknowledgment of deeds and other instruments; that I am well acquainted with the handwriting of said notary public, and verily believe that the signature to the said certificate purporting to be his is genuine.

In attestation whereof I hereto subscribe my name, and affix the seal of said appellate division of said court, the day and year above written.

BERTRAM S. BLAISDELL, *Clerk.*

(10c. U. S. int. rev. stamp, can.)

39 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

UNITED STATES OF AMERICA, *State of New York, County of New York,* } *ss:*

Edward E. Arnold, being duly sworn, says: that at all the times mentioned in the complaint in this action he was, and is now, a resident of the city of Providence, State of Rhode Island, and a citizen of said State, and the president and chief executive officer of The Mathieson Alkali Works, the defendant above named.

Said defendant is a corporation of the State of Virginia, duly organized and existing under the laws of said State, and a citizen of the State of Virginia where its principal office and place of business

is now and always has been located; the defendant's main office and place of business is, and always has been, at Saltville, in the State of Virginia, where it has and has had for many years large tracts of land and extensive properties and plant for the manufacture of salt, soda ash and heavy chemicals, by chemical processes. The defendant has also, for some years, and since shortly after its incorporation, had an office for transacting business at the city of Providence, State of Rhode Island, where its president and treasurer have been regularly in daily attendance for the transaction of the business of the corporation, and this has been the only office of the company for the transaction of any of its business other than
40 actual manufacturing operations outside of the State of Virginia.

I am informed that on or about the 18th day of April, 1901, a copy of the summons and complaint in this action not addressed to the defendant, was delivered to one Richard T. Wilson, a banker, of the city of New York, at his personal banking office No. 33 Wall street, New York city, and also on the same date another copy, not addressed to the defendant, was handed to Mr. John G. Agar, counselor-at-law, and for many years one of defendant's general counsel, at his personal office, No. 31 Nassau street, New York city, and that such delivery to Mr. Wilson or to Mr. Agar is claimed by plaintiff to have been service of the summons and complaint upon the defendant corporation, and that thereby jurisdiction of the defendant was obtained in this action.

Said Richard T. Wilson and John G. Agar, were not, however, either of them on said April 18th, or any time prior thereto, officers of the defendant corporation. It is true that Mr. Wilson and Mr. Agar are and for some years have been members of the board of directors of the defendant corporation, but neither of them is, or has been, at any time, an officer or agent of the defendant corporation or authorized to represent it, or engaged in any way in the conduct or management of its affairs, except merely in any advisory capacity as members of the board of directors. Mr. Wilson is a banker regularly engaged in business as such in the city of New York, and Mr. Agar is a lawyer and one of defendant's counsel and attorneys.

I further say that on 18th day of April, 1901, when said pretended service of summons and complaint is claimed to have been made, the defendant had no property of any kind whatsoever within the State of New York, had no office, officer or agent within the State of New York, and was not engaged in any way in
41 business in the State of New York, and had not been for several months.

For about three years prior to December 31st, 1900, the defendant had a manufacturing establishment at Niagara Falls in the State of New York, where it was engaged in manufacturing caustic soda and bleaching powder by certain electrical processes, which it then owned and there operated. No other business was there transacted except the strictly manufacturing operations of this plant In connection with this plant it had at Niagara Falls, during that time and prior to December 31, 1900, a works office for the sole purpose

of attending to the details strictly connected with the manufacturing operations there conducted. This was not at any time an office of the company for the general transaction of its business and was not in charge of any officer of the company and was not an office or place at which the defendant transacted any business except that of strictly manufacturing. Its offices and places for transacting its business were during all this time only at Saltville, Virginia, and at Providence, Rhode Island.

About the 31st day of December, 1900, the defendant for full value, sold and transferred its entire plant at Niagara Falls and all its property of every kind and description whatsoever, in the State of New York, including all its electrical processes, to the Castner Electrolytic Alkali Company and thereupon the defendant retired absolutely and wholly from the State of New York. The processes, method and plant of the defendant in Virginia and in Niagara were not allied but were utterly diverse. The processes conducted in Virginia were entirely chemical; those conducted at Niagara Falls were entirely electrical, and the plant and product there were small in comparison with the plant, property and product in Virginia.

42 This sale and transfer of defendant's plant and property in New York was under negotiation for a period of several months prior to its consummation and was only finally concluded about December 31, 1900. The actual delivery to the Castner Electrolytic Alkali Company was made by the defendant shortly after the first of January, 1901, having been delayed on account of certain details. Since then the defendant has had no property, no office, no agent and has not transacted business in the State of New York.

EDWARD E. ARNOLD.

Subscribed and sworn to before me this 28th day of May, 1901.

EDWARD A. FRESHMAN,
[NOTARIAL SEAL.] *Notary Public, New York County.*

43 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

UNITED STATES OF AMERICA,
State of New York, County of New York, } ss:

Richard T. Wilson, being duly sworn, says: I am and for many years past have been a resident of the city of New York, engaged in business as a banker at No. 33 Wall street, New York city. On April 18, 1901, a copy of the summons and complaint in this action addressed to me personally, was handed to me at my said office in Wall street, and I am informed that such delivery is claimed by the plaintiff to be a service of the summons and complaint in this action upon the defendant corporation. I am not, however, and

never have been an officer of said corporation, nor an agent or manager thereof, in any capacity. I was on said April 18, 1901, a member of its board of directors and have been for some years, but as such director I have never taken any part in the administration or management of its affairs or the conduct of its business other than in an advisory capacity as a member of the board of directors.

On the 18th day of April, 1901, and for some months previous thereto, the defendant corporation had no property of any kind, no office, no agent and transacted no business of any kind and was not engaged in business in any way in the State of New York. Its manufacturing plant and property were then all located at
44 Saltville, Virginia, where the defendant has and always has had very large interests in lands and extensive salt works and chemical works of various kinds. Its offices and places of business have always been in Saltville, Virginia, and Providence, Rhode Island, where its executive officers have resided.

For some two or three years prior to December 31st, 1900, the defendant had a comparatively small plant at Niagara Falls, New York, for manufacturing caustic soda and bleaching powder by electricity, but this was sold for full value about December, 1900, since when the defendant has had no interests or property and done no business in the State of New York. The defendant is and always was a corporation of the State of Virginia and a citizen of the State of Virginia.

R. T. WILSON.

Sworn to before me this 29″ day of May 1901.

NORMAN L. ZENO,
[NOTARIAL SEAL.] *Notary Public, Kings Co., N. Y.*

Certificate filed in New York county.

45 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

UNITED STATES OF AMERICA,
State of New York, County of New York, } ss:

John G. Agar being duly sworn, says: I am an attorney and counsellor at law, duly admitted to practice in the supreme court of the State of New York, and in this court for about twenty years, during which time I have been actively engaged in the practice of law in the city of New York; I am and for more than twenty years have been a citizen and resident of the State of New York.

On April 18, 1901, a copy of a summons and complaint entitled in this action in the supreme court of the State of New York, addressed to me personally, was handed to me at my law office, No. 31 Nassau street, New York city. As I am not a defendant in this action, it is possible that such delivery to me may be claimed by

plaintiff to be a service of the summons and complaint in this action upon the defendant corporation. I am not, however, and never have been an officer of said corporation, nor an agent, nor manager thereof in any capacity. I and my law firm have been for some years general counsel and attorneys for the defendant corporation. I was also on said April 18, 1901, a member of its board of directors, but as such director I have never taken any part in the adminis-
46 tration or management of its affairs or the conduct of its business, except in attending meetings of the board.

On the 18th day of April, 1901, and for some months prior thereto the defendant corporation had no property of any kind, no office, no agent, and had transacted no business of any kind and was not engaged in business in any way in the State of New York. Its manufacturing plants and property were all located at Saltville, Virginia, where it has, and since its incorporation has had large interests in lands and extensive salt works and chemical works of various kinds. Its offices and places of business have always been in Saltville, Virginia, and Providence, Rhode Island, where its executive officers have resided for many years.

For some two or three years prior to December 31st, 1900, the defendant had a comparatively small plant at Niagara Falls, New York, for manufacturing caustic soda and bleach by an electrolytic method. All of this property was sold for its full value December 31st, 1900, and possession thereof delivered January 25, 1901, to the purchaser, since which time the defendant has had no property, no office, no agents and has done no business in the State of New York. The defendant is now and always has been a corporation of the State of Virginia and a citizen of the State of Virginia, having its manufacturing plants and its property and transacting its business in the State of Virginia, excepting for the short time it had the above plant at Niagara Falls, New York, which has been sold as I have above stated.

JOHN G. AGAR.

Sworn to before me this 5″ day of June, 1901.

EDWARD A. FRESHMAN,
Notary Public, New York County.

{Seal Edward A. Freshman, Notary Public, New York County.}

47 (Endorsed:) U. S. circuit court, southern district of New York. Jefferson B. Conley, plaintiff, against The Mathieson Alkali Works, defendant. Order to show cause and affidavits. Agar, Ely & Fulton, attorneys for defendant, appearing specially only, 31 Nassau St. New York city. U. S. circuit court, Filed Jun 12, 1901, John A. Shields, clerk.

48 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
MATHIESON ALKALI WORKS, Defendant.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

John G. Agar being duly sworn says: I have already made an affidavit herein, verified June 5, 1901, upon a motion by defendant to set aside the service of summons herein; my attention has been called to the answering affidavits filed upon the motion in behalf of the plaintiff and particularly to an affidavit made by Willard U. Taylor, one of plaintiff's attorneys, verified June 6th, 1901, in which he refers to an interview with me in July, 1900. While it is of no consequence and wholly immaterial with reference to this motion what the facts were in July, 1900, nevertheless Mr. Taylor is wholly mistaken in many of the statements which he makes respecting his said interview with me in July, 1900, although I have no doubt that he believes them to be correct. Nevertheless, I never stated to Mr. Taylor that the books of the company were then in the city of New York, or that the book-keeper who had charge of the financial affairs of the defendant corporation was on his vacation, nor did I state that R. T. Wilson had supervision of the books and accounts or had charge of the finances of the concern. It is furthermore, impossible that I could have made any such statements, as they
49 would not have been true if I made them. No person in charge of the financial affairs of the company has resided in the city of New York for many years. I have never seen the books of the defendant company and they have not been kept nor have they been in the city or State of New York for many years. Mr. R. T. Wilson does not have and never has had supervision of the books of the company, nor has he been in charge of the finances of the company, as stated in Mr. Taylor's affidavit. I do not know what misled Mr. Taylor or induced him to believe or to infer that I stated to him that the book-keeper who had charge of the financial affairs of the Mathieson Company was resident in this city or that the financial books of that company were kept here, unless it be a general conversation which I had with him in July, 1900. At that time Mr. Taylor called at my office to discuss the claim of his client and the conversation extended to the financial condition of the company. I did not make to Mr. Taylor any statement of the financial condition of the company, but I did tell him that I would give him a general statement of the assets and liabilities of the company from data in my possession if my accountant were not then absent, on his vacation, from the city. Mr. Taylor may have thought I referred to the book-keeper of the Mathieson Company, but I did not and referred only to my own book-keeper, who is not in any way connected with the Mathieson Company.

I never informed Mr. Taylor that I was conducting negotiations with Mr. Mathieson or that his claim would soon be paid or settled.

With reference to the motion now being made on behalf of the defendant to set aside the alleged service of summons, it is certainly wholly immaterial whether or not at some time in the
50 past the defendant may have had an office and transacted business in this State, or whether in July, 1900, the books and accounts of the company were kept in the State of New York. The fact is that they were not then nor at any time since in the State of New York, and that the defendant has never had any office in the city of New York for the transaction of its business, and has never done any business in the State of New York other than as stated in my previous affidavit and the other affidavits submitted on behalf of the defendant, "that for two or three years prior to December 31, 1900, the defendant had a small plant at Niagara Falls, New York, for manufacturing caustic soda and bleach by an electrolytic process." Other than this manufacturing plant at Niagara Falls, the defendant company has never done any business or had an office for the transaction of its business in the State of New York. Since the sale of its Niagara Falls plant and the property in connection therewith, the defendant has done no business of any kind in the State of New York and has had no office in the State. That this is true appears also from the numerous answering affidavits submitted by the plaintiff on this motion, all of which are to the effect that no officer or property of the company can be found within the State under any of the varied conditions referred to in these affidavits.

I desire to call the attention of the court to the fact that even in Mr. Taylor's affidavit of June 6, 1901, the date at which he claims to have attended at an alleged office of the defendant in New York city is January 10, 1901, more than three months prior to the pretended service of the summons and complaint in this action, which was not until April 18, 1901.

JOHN G. AGAR.

Sworn to before me this 11th day of June, 1901.

EDWARD A. FRESHMAN,

[NOTARIAL SEAL.] *Notary Public, New York County.*

51 (Endorsed:) U. S. circuit court, southern district of New York.—Jefferson B. Conley, against The Mathieson Alkali Works.—Affidavit.—Agar, Ely & Fulton, attorneys for defendant, appearing specially only, 31 Nassau St. New York city.—U. S. circuit court, Filed Jun- 12, 1901, John A. Shields, clerk.

52 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

THE SOUTHERN DISTRICT OF NEW YORK, *ss:*

Jefferson B. Conley, being duly sworn deposes and says: I am the plaintiff in the above-entitled action. I am a citizen of the State

of New York, and reside in the burough of Manhattan, city of New York. The contract on which the action is founded was made in the city of New York, and all the duties and obligations imposed upon the defendants by the terms of the contract are to be performed there. I say upon information and belief that ever since the organization of the defendant company, in 1892, the company has maintained its principal office in the city of New York.

In June, 1896, at a meeting of stockholders of the company the following by-law was passed:

"Resolved: That article II. of the by-laws be and hereby is amended, as to the last paragraph thereof, so as to read as follows:

"The directors in addition to any other meetings that may be held shall hold regular monthly meetings at the office of the company in the city of New York, at 12 o'clock noon on the second Wednesday of each and every month in each year.

"Special meetings of the board may be called at any time by the president when deemed necessary, and shall be called by the president or secretary at any time upon the written request of any three directors.

"At all meetings a majority of the board shall constitute a quorum for the transaction of business."

53 I am informed and believe that this by-law has been, and is observed; and also that, at least, since the above date a majority of the board of directors have been residents of the city of New York; also that R. T. Wilson, one of the persons upon whom service of the summons was made in this action, is a director of the company, and its financial agent having ever since its organization had the main charge and management of all the financial affairs of the company, with an officer in the city of New York, and this is not denied in the moving affidavit of Mr. Ely; also that the said John G. Agarm on whom the summons was served, was a director of the company, and this is not denied. Moreover, it is proved by the admissions of Wilson and Agar set forth in the affidavit of Lowe, who served the summons.

Section 432 of the N. Y. Code of Civil Procedure, provides the method of serving a summons on a foreign corporation. It is proved and not denied that the officers of the corporation specified in subdivision one (1) could not be found, indeed, it is alleged in the affidavit of Mr. Ely that they reside without the State. I have enquired and learned from the secretary of state, that no person has been designated by the corporation upon whom service could be made, as contemplated by the second (2) subdivision of the section. Service was therefore, made under the provisions of the third (3) subdivision, authorizing service upon a director of such a corporation in the state of facts above mentioned.

As to the statement in the affidavit of Mr. Ely, that the corporation has no property in this State. I am advised that that
54 fact has no relation to the jurisdiction of the State court which is defined in section 1780 Code of Civil Procedure, which provides among other things that a citizen of the State may maintain an action against a foreign corporation "for any cause of

action." Moreover, I am informed and believe that the said statement, that the defendant company has no property in this State is not true. A part of my information at this point is derived from a letter written by John Russell Gladding, treasurer of the company, on the very day the summons in the action bears date, namely, March 15th of the present year. In that letter it will be*en* seen that the treasurer informs a stockholder that the company is about to double its already extensive plant at Niagara Falls, which was established in 1896, and where the chief manufacturing of the company has been, and is carried on. I am informed and believe it is true that about December 31st, 1900, the defendant made a conveyance to the defendant company called "the Castner Electrolytic Alkali Company;" but I am informed and believe and allege that such conveyance was, and is fraudulent and void, that one of the objects of it was to defraud the plaintiff, and embarrass him in the collection of his judgment.

Stockholders of the defendant company have brought an action in the supreme court of the State, which is now pending to set aside that conveyance. I am informed and believe and allege that the facts in regard to that transaction are set forth in the stockholders' bill of complaint in that action, which I adopt and annex hereto, and make part of this affidavit.

I am advised that the directors had no lawful power as agents and trustees for the stockholders to make such disposition of
55 the corporate property. They were precluded by the general rules of law from destroying the business of the company by means of such a conveyance, and they are, moreover, especially prohibited by a by-law of the company, even from encumbering the property by mortgage. There is no pretense of any authority from a stockholders' meeting, and if without such authority there is no power to mortgage, there was certainly none to convey in fee. The provision of the by-law is as follows:

"The immediate government of the affairs of the corporation, except as otherwise herein provided, shall be vested in the board of directors, including the right in the discretion of said board to acquire, by purchase or exchange, lands necessary for its business and the right to sell land not required therefor, but nothing herein contained shall authorize said board to mortgage said company's lands, except by vote of the stockholders in general meeting assembled."

I am advised that the validity of this conveyance has no relation to the question of jurisdiction. I am further advised that if it had any such relation this court would not assume the validity of the conveyance, for the purpose of setting aside the service, and thus at the outset deprive the plaintiff of all remedy in the premises.

JEFFERSON B. CONLEY.

Sworn to before me this 3rd day of May, 1901.

[SEAL.] JOHN CUPP LOWE,

Notary Public, No. 132, *New York County.*

56 EX. A FOR IDENTIFICATION. Nov. 7, 1901.

Copy.

The Mathieson Alkali Works.

Edward E. Arnold, president, Providence, R. I.; 53 Canal street, Providence, R. I.

John Russell Gladding, treas. & sec'y, Providence, R. I.

Julian S. Goetchins, ass't treas., Saltville, Va.

Works at Saltville, Va.; Niagara Falls, N. Y.

PROVIDENCE, R. I., *March* 15, 1901.

Mr. James A. Pell, Court lodge, Horton Kirby, near Dartford, England.

DEAR SIR: I acknowledge receipt of your letter of March 5th.

In view of the fact that the company has published no statement of its annual stockholders' meeting, it is somewhat difficult for me within the limits of a letter of any reasonable length to give you a comprehensive view of the company's affairs. I take pleasure, however, in making some brief statements in regard thereto, and if you have any particular questions which you desire to ask, we shall be glad to accord them a proper answer.

The management attribute the failure of the property at Saltville to produce satisfactory results to the original faulty construction of the works. We have contended against this for a long while, and for some time past, and at the present time are practically rebuilding the plant. There seems good reason to believe that when all this work is completed the business at Saltville will become satisfactory to the stockholders. In the meantime we have, as you are doubtless aware, been operating the so-called Castner patents in a plant of some two-thousand-horse power at Niagara Falls.

57 This has gone on successfully and is today producing highly satisfactory results, in consequence of which we are at the present time about to put up additional plant at that point of a capacity equal to twice that already installed, which we anticipate will largely increase the earnings of the company.

The course of the company's affairs necessitated the raising of funds from an increase of capital, and the plan which has met with the approval of a very large majority of the stockholders, is now being carried into effect. A large debt had been accumulated by the company which, under the present new proposed capitalization, will all be converted into preferred stock. When our present arrangements are completed the total capital of the company will be $3,500,000 of preferred stock and $6,500,000 of common stock. The common stock embraces the old shares among which are your own; that is to say, the added amount of common stock holds no preference over but on the contrary stands on the same basis with, the old common stock.

This, I am aware, is a somewhat brief outline of the situation, but we believe that the plan successfully carried through will place a value upon every stockholder's interest.

In reference to Mr. Smith, whom certain of the English stockholders empowered to act for them, I am quite sure that you did wisely not to give him a proxy to act for you. Mr. Smith has suggested nothing in the way of improvement of the company's situation and has, in all his relations to us, apparently sought simply to annoy us in trivial and foolish methods.

I remain,

Yours respectfully,

(Signed) JOHN RUSSELL GLADDING, *Treasurer.*

58 Supreme Court, New York County.

DANFORTH GEER, WILLARD F. GAY, ARTHUR W. SMITH, Thomas T. Mathieson, Robert Morris, Annie Morris, W. E. S. Clarke, and James D. Thorburn, Plaintiffs,

against

THE MATHIESON ALKALI WORKS, a Corporation of the State of Virginia; The Castner Electrolytic Alkali Company, also a Corporation of the State of Virginia, and against Edward E. Arnold, Richard T. Wilson, John G. Agar, Alfred Ely, John Russell Gladding, Frederick C. Sayles, Frank A. Sayles, Theodore Hooper, as Directors of the said Mathieson Alkali Works, Defendants.

The plaintiffs complain of the defendants and allege:

I. The plaintiffs bring this action as well on their own behalf as on behalf of all others in like situation who may come in and contribute to the expense thereof.

59 II. The plaintiffs are stockholders of the said Mathieson Alkali Works, and were such stockholders at the date of the conveying away of the property of the said Mathieson Alkali Works, by the defendants, directors of said company, hereinafter mentioned; the plaintiffs' holdings of stock being respectively as follows:

The said Danforth Geer, fifty (50) shares.

The said Willard F. Gay, fifty (50) shares.

The said Arthur W. Smith, twenty-five (25) shares, Thomas T. Mathieson, thirty-six (36) shares, Robert Morris, two hundred (200) shares, Annie Morris, twenty-five (25) shares, W. E. S. Clarke, twenty-five (25) shares, and the plaintiff, James D. Thorburn, one hundred and seventy-five (175) shares.

The said Danforth Geer and Willard F. Gay are citizens of the State of New York, residing at Hoosick Falls, in said State, the said Arthur W. Smith is a resident of the State of New Jersey, the several other defendants and citizens of the United Kingdom of Great Britain and Ireland, residing at Liverpool, England.

III. The said Mathieson Alkali Works was created and organized under the laws of the State of Virginia, in or about the month

of August, 1892, for the purposes expressed in the petition of incorporation as follows:

2nd. That the purposes for which the said company is formed are the manufacturing of salt, soda ash, bleaching powder, sulphuric acid, and chemicals of all kinds, the smelting of iron, zinc, copper and other minerals, the carrying on of a general merchandise business and engaging in the business of agriculture and stock-raising.

The capital stock of the said corporation was to be not less than two (2) nor more than five (5) million dollars; there were to be nine directors. The said corporation has an office and place of
60 business in the city, county and State of New York, and the property to recover which this action is brought is situate in the State of New York.

IV. The defendant The Castner Electrolytic Alkali Company is also a corporation of the State of Virginia, and has an office and place of business in the said city of New York, where all but two of its directors reside. The said corporation is hereinafter more particularly described.

V. The chief promoters of the said corporation, the Mathieson Alkali Works, were the defendants R. T. Wilson and Edward E. Arnold, as the plaintiffs are informed and believe. The plaintiffs are also informed and believe that the object of the defendant Wilson in the premises was the profitable sale and disposition to such corporation of several thousand acres of land in the State of Virginia, which he owned and alleged to be favorable to the production of the commodities above mentioned, and that the object of the defendant Arnold was to obtain the exclusive sale and disposition of the company's products. That accordingly, after the organization of the said last-mentioned corporation, the said defendant Wilson arranged a sale of the said lands to the company for a large sum, payable wholly or in part in mortgage bonds and shares of the company, but as to the details of the said sale the plaintiffs have no knowledge.

VI. The plaintiffs are informed and believe that the said corporation did issue two million of capital stock, and that it also created and issued mortgage bonds, but as to the particulars concerning such capital stock and mortgage bonds the plaintiffs have no knowledge, nor for the reasons hereinafter stated, any means of knowledge.

VII. The said Mathieson Alkali Works, after organization, proceeded to erect a manufacturing plant for the purposes of its
61 business at Saltville, in the State of Virginia. When completed it was put in operation, and has since been maintained.

VIII. In or about the month of June, 1896, the said Mathieson Alkali Works entered into a contract with the Niagara Falls Power Company of this State, whereby, among other things, the said alkali company leased lands and power for a plant at Niagara Falls, as hereinafter more particularly set forth; and the said alakli company established on the said premises at Niagara Falls an extensive and valuable plant for the manufacture of commodities mentioned in the charter, and at such plant carried on a profitable business

amounting, as the plaintiffs are informed and believe, to several hundred thousand dollars a year, but the plaintiffs are ignorant of the exact facts in relation thereto for reasons hereinafter stated.

The plaintiffs are informed and believe that the defendant Edward E. Arnold is president of the said Mathieson Alkali Works Company, and the defendant R. T. Wilson is its financial agent and manager. The plaintiffs allege on information and belief, that the defendants Arnold and Wilson all along have had, and now have the sole and absolute control of all the affairs of the said company; that the defendants Apgar and Ely are attorneys of the said Arnold and Wilson; that the defendant Gladding is an employee of some sort, and that all the directors of the company, other than Arnold and Wilson, are what are known, and called in such cases, dummies, without any substantial interest in the company.

IX. The defendants Arnold and Wilson, so as aforesaid having the sole control of the affairs of the said company, have managed its business from the beginning with the greatest secrecy and concealment. The plaintiffs are informed and believe that when it has been necessary to call a meeting of stockholders notices have
62 been so arranged that stockholders could not attend, and that if any stockholders did attend and exhibit any desire for information concerning the company's affairs, the meeting would be at once adjourned to escape such inquiry, of which course of conduct the following is an instance: The plaintiffs are informed and believe that capital stock of the company to the amount of several hundred thousand dollars is held in Europe, namely in England and of that stock the plaintiff Smith represents many holders of shares under proxies and power of attorney.

In 1900, under date of May 29, 1890, the said Arnold, as president, and Gladding, as secretary, issued a call for a meeting of stockholders to be held at Saltville, on June 19 following. Those defendants knew that even if at once sent out notices would not be received by European stockholders in time to enable them to be represented at that meeting. But the plaintiff Smith, at the request of those for whom he held proxies, did attend for the purpose of obtaining information concerning the affairs of the company. Having so stated, thereupon the meeting was at once adjourned, and the officials present refused any information whatever, saying that the plaintiff Smith would be advised of any future meeting. The plaintiff Smith has never been informed of any subsequent meeting of stockholders or of any notice of such meeting.

The plaintiffs are informed and believe that the executive business of the said Mathieson Alkali Works Company is mainly carried on in the city of New York. The largest and most profitable part of the business of the company is (or was until lately) carried on at its aforesaid plant and works at Niagara Falls, in the State of New York. A by-law of the company requires that monthly meetings of the directors shall be held in the city of New York.

The plaintiffs are informed and believe that such meetings are held there secretly in respect to time and place of meeting in
63 order to avoid publicity and escape service of legal process.

The plaintiffs are informed and believe that no report has

ever been issued to stockholders, giving any account of the business and affairs of the company. The plaintiffs, through their representatives, have applied to the officers of the company for leave to examine its books, but such leave was refused. In or about the 9th day of January, 1901, the plaintiff, Smith, applied under the statute made and provided for such cases for an examination of the stock book, which such a company is required to keep and exhibit. The proper officers of the company evaded service, and the person served denied official relation, and so the application was denied by the court for want of proper service. A little later an attempt was made by the plaintiff, Smith, to serve the required demand and notice on the defendant Arnold, as president of the company. He was actually encountered in the street under some disguise; he denied his identity, and escaped without service—and by reason of this evasion of service of process, the plaintiff has not as yet been able to obtain an inspection of the stock book of the company, which it is by law required to keep and expose to stockholders for inspection as aforesaid.

In violation of the law under which foreign corporations are permitted to carry on business in this State, the said corporation, the Mathieson Alkali Works, so managed and controlled, as aforesaid, has not obtained any certificate from the secretary of state authorizing it to carry on business in this State, nor has any one been designated as required by statute on whom service of process can be made.

X. In the summer of 1900, the defendants, Wilson and Arnold, promoted and endeavored to carry through a scheme for the transfer of the property, patents and business of the said Mathieson Alkali Works to another corporation of the State of Virginia, and
64 organized by them as the plaintiffs are informed and believe. The said scheme of the defendants Wilson and Arnold, in support of which they issued a prospectus, was disapproved by the stockholders of the Mathieson Alkali Works Company, and it failed. The defendant Wilson, then in effect threatened, as the plaintiffs are informed and believe, that in the event of the failure of this scheme, he would render existing interests in the alkali company worthless.

XI. The defendant Arnold is a member, as the plaintiffs are informed and believe, of the firm of Arnold, Hoffman & Company, dealers in chemicals in the city of New York.

The plaintiffs are informed and believe, that under contracts and arrangements nominally between the above firm and the said Mathieson Alkali Works, but really between the said firm and the defendant Wilson, the said firm has had the exclusive sale and disposition of the said products of the said alkali works since its organization. The plaintiffs are ignorant of the terms of such contracts and arrangements, because they have been concealed and kept secret from stockholders of the company.

The plaintiffs are informed and believe, that such contracts and arrangements are grossly improvident; that they provide, and have provided all along for exorbitant profits and commissions to the said

firm, and that the existence of such contracts and arrangements is one reason for the secrecy and concealment as to the company's affairs, and their management above set forth.

The plaintiffs allege that the business, and pecuniary interests of the defendant, Arnold, president of the said alkali company, are actually hostile and prejudicial to the interests of the company and its stockholders.

The plaintiffs are also informed and believe and allege that the pecuniary interests of the said Wilson, as the financial agent of the said alkali company, are also actively hostile to the interests
65 of the said company and its stockholders; and that all the affairs of the company are managed in, and for the personal interests of the said Arnold and Wilson, in opposition to the rights and interests of its stockholders. The said company has never paid any dividends on its capital stock. The plaintiffs are informed and believe the dividends have been earned, and should have been declared and paid, but have, in fact, been appropriated by the defendants Arnold and Wilson, by some means or other to their own use respectively.

XII. The plaintiffs are informed and believe and allege, that the defendants Arnold and Wilson, together with the other directors of the said Mathieson Alkali Works have confederated and fraudulently conspired to dispose of, and unlawfully make away with all, or substantially all of the property and assets of the company; and have done so, or attempted to do so by means of the instrument and conveyance hereinafter set forth. That in order the better to conceal their acts and doings in all the premises set forth in this complaint, the defendants, the directors of the said company, which, as aforesaid, is a foreign corporation have as before stated, never designated any person on whom process might be served, as they are required by law to do. And have never obtained from the secretary of state, the certificate authorizing the company to enforce contracts made in this State. Moreover, there is a corporation and copartnership directory, published in the city of New York, which should contain the names of the directors of the said company. It is stated, in the said directory, that all information was denied. Denied, as the plaintiffs believe, the better to conceal the fraudulent conduct and schemes herein set forth.

XIII. The defendants, The Electrolytic Alkali Company purports to be as above stated, a corporation organized under the laws
66 of Virginia. The plaintiffs are informed and believe, that it was promoted and organized by the defendants Arnold and Wilson, or by their procurement; that it is entirely controlled by those two defendants who are chiefly interested in its affairs—but the plaintiffs have but recently, and within the last few days, obtained knowledge of the existence of such last-mentioned corporation and of the conveyance hereinafter mentioned; and have no precise knowledge of its origin and affairs—and the plaintiffs believe that the great body of stockholders of the Mathieson Alkali Works Company are yet in ignorance of the existence of said Castner Electrolytic Company, and of the conveyance of the property of the

Mathieson Alkali Works Company to the said Castner Electrolytic Company.

By a communication received from the secretary of the State of Virginia, under date of April 30th, of the present year, 1901, it appears that the said Castner Electrolytic Alkali Company was incorporated under the laws of the State of Virginia, about July 29, 1900. It is provided by the charter of the said company that its officers shall consist of a president, vice-president and seven directors. In respect to officers for the first year, the certificate of incorporation contains the following provision:

Seventh. The officers for the first year shall be and they are hereby constituted as follows, with the residence of each:

Name.	Addresses.
James M. Edwards, president	New York city, N. Y.
John G. Ager, vice-president	New York city, N. Y.
John H. Ingram, treasurer	New York city, N. Y.
John F. Van Name, secretary	New York city, N. Y.

Directors.

Richard T. Wilson	New York city, N. Y.
Richard T. Wilson, Jr.	New York city, N. Y.
James M. Edwards	New York city, N. Y.
Edward E. Arnold	Providence, R. I.
Frank A. Sayles	Saylesville, R. I.
John G. Agar	New York city, N. Y.
John H. Ingram	New York city, N. Y.

67 The said Richard T. Wilson, is the defendant Wilson. The said Richard T. Wilson, Jr., is his son; the said Edward E. Arnold is the defendant Arnold, and the said John G. Agar is the attorney-at-law of the defendant The Mathieson Alkali Works, and of the other defendants Arnold and Wilson, as the plaintiffs are informed and believe. The plaintiffs are further informed and believe that the other officers and directors of the said electrolytic company are the mere servants and instruments of the said defendants Arnold and Wilson, in whose interest the said last-mentioned company was created.

The plaintiffs further allege on information and belief that the said last-mentioned company was created and organized by the said Wilson and Arnold, as a means and contrivance for enabling them to cheat and defraud the creditors and stockholders of the said Mathieson Alkali Works and among other ways by means of the conveyance mentioned below in the next paragraph.

XIV. Within the last few days the plaintiffs have discovered by the records in the office of the county clerk of Erie county, in this State, that on the 31st day of December, 1900, the said Mathieson Alkali Works executed under its corporate seal by the defendant Arnold, its president, and the defendant Gladding, its secretary, the following instrument that is to say:

"The Mathieson Alkali Works
to
Castner Electrolytic Alkali Company. } Assignment.

"Know all men by these presents, that the Mathieson Alkali Works, a corporation created and existing by and under the
68 laws of the State of Virginia, owning patents, applications, rights and property hereinafter described, parties of the first part, for and in consideration of the sum of one dollar and other valuable consideration to it in hand paid by the Castner Electrolytic Alkali Company, also a corporation created, organized and existing by and under the laws of the State of Virginia, party of the second part, receipt whereof is hereby acknowledged and in consideration of the covenants and agreements hereinafter contained on the part of said party of the second part, has granted, bargained, sold, assigned, transferred, conveyed and confirmed, and by these presents does hereby grant, bargain, sell, assign, transfer, convey and confirm unto the said party of the second part, its successors and assigns, the following agreements, inventions, rights and property to wit, 1. A certain agreement heretofore made between the party of the first part and the Aluminium Company, Limited, of London, England, bearing date the first day of December, 1894, and any and all supplements thereto together with all inventions, patents, rights, and privileges acquired by or to which the said Mathieson Alkali Works may be entitled at any time thereunder or by reason thereof subject, however, at all times, to all the conditions, payments, royalties and agreements thereunder to be done, paid or performed on the part of said Mathieson Alkali Works, each and all of which said party of the second part hereby covenants and agrees on its part to assume, pay and perform as part consideration therefor.

2. (*a.*) "United States patent No. 518,135, dated April 10, 1894, granted to Hamilton Young Castner for improvements in connection with electrolytic process, and thereafter duly assigned and transferred to the party of the first part."

69 (*b.*) "United States patent No. 528,322, dated October 30, 1894, granted to Hamilton Young Castner for new and useful improved processes of, and apparatus for the electrolytic decomposition of alkaline salts, and thereafter duly assigned and transferred to the party of the first part."

(*c.*) "United States patent No. 572,472, dated December 1, 1896, granted to Hamilton Young Castner for new and useful improvements in anodes for electrolytic processes and thereafter duly assigned and transferred to the party of the first part."

(*d.*) "United States patent No. 546,348, dated September 17, 1895, granted to William A. Rosenbaum for new and useful improvements in electrolytic apparatus, and thereafter duly assigned and transferred to the party of the first part."

"Together with all the right, title and interest of the party of the first part in and to each and every of the foregoing patents and inventions therein described, and all the rights of every kind of the

said party of the first part therein and thereunder subject, however, to all royalties or other payments hereafter due or payable under any agreements affecting any of said patents which royalties and payments the party of the second part hereby assumes and agrees to pay as part consideration herefor."

3. "The following new and useful improvements and inventions and applications for letters patent for the same to the United States Patent Office and now pending therefor, to wit:

Electrolytic cell, filed March 16, 1900, No. 8968.

Electrolytic cell, filed March 16, 1900. No. 8969.

Pipe coupling, filed March 22, 1900, No. 9681.

70 Drum-heading machine, filed March 22, 1900, No. 9682.

Electrolytic cell, filed March 26, 1900, No. 10220.

Electrolytic cell, filed June 14, 1900, No. 20,264.

Rotary pump, filed July 21, 1900, No. 24,362.

Gas connector, for electrolytic cells, filed October 10, 1900, No. 32,623.

Connector for electrolytic cells, filed October 16, 1900, No. 33,308.

Design for anodes, filed January 10, 1901, No. 42,812.

"Together *will* all right, title and interest — said The Mathieson Alkali Works in said inventions and applications with the right to any and all United States and other letters patent issued or which may be issued thereafter subject however, to all agreements which The Mathieson Alkali Works may have made in regard to said inventions and applications, which agreements, together with all covenants and payments therein on the part of said The Mathieson Alkali Works, said party of the second part hereby assumes and agrees to perform and pay as part consideration therefor."

4. "A certain indenture of lease of land and agreement for electrical house power, bearing date the first day of June, 1896, between The Niagara Falls Power Company and said The Mathieson Alkali Works, together with the supplements thereto, dated the 28th day of June, 1897, and the first day of June, 1898, leasing certain lots, pieces or parcels of land situated in the city of Niagara Falls, county of Niagara and State of New York, as in said lease and supplements more particularly described, together with all the right, title and interest of every kind or description of said Mathieson Alkali Works in, to and under said lease and supplements thereto, and in

71 and to all buildings and other fixed property erected on said premises by said Mathieson Alkali Works and belonging to it."

"To have and to hold the same unto the said Castner Electrolytic Alkali Company, its successors and assigns, for and during all the rest, residue and remainder of the terms of said lease and agreement and agreements supplementary thereto, and any extensions or renewals thereof, subject, nevertheless, to the rents, covenants, conditions and provisions in said lease and supplements thereto contained, to be paid and performed on the part of said Mathieson Alkali Works, which and each of which, said Castner Company hereby assumes and agrees on its part to pay and perform."

5. "All the buildings, apparatus, plant, stock in trade, trade-marks

and property of every kind and description of said The Mathieson Alkali Works, at Niagara Falls in the State of New York; together with the good-will of the business heretofore conducted by it at said Niagara Falls."

"To have and to hold the same unto the said party of the second part, its successors and assigns forever. It being the intent of this instrument to grant and convey to the parties of the second part all the plant, rights and property of every kind and description of The Mathieson Alkali Works at Niagara Falls in the State of New York, together with all inventions, patents and patent rights owned and used by it, or in connection with its said works together with all trade-marks and the good-will of the business as a going concern, free of all encumbrances except as to the continuing rents, royalties or charges under any existing leases or agreements."

"And the said party of the first part hereby covenants and agrees that the aforesaid property, rights, patents and inventions
72 are free and clear of, and from all former, or other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, unpaid royalties, liens, mortgages and encumbrances whatsoever, except as hereinbefore specified."

"And the party of the first part for itself and its successors, covenants and agrees to, and with the party of the second part, to warrant and defend the above-described property, rights, patents and inventions, granted, bargained, sold, assigned, transferred, conveyed and confirmed unto the party of the second part, its successors and assigns against all and every person and persons whomsoever."

"And said The Mathieson Alkali Works, party of the first part, hereby covenants that it will make, execute, acknowledge and deliver such other and further conveyances and instruments in writing as may be necessary or as counsel may advise, for the further assurance to the party of the second part of the title to the said agreement, inventions, rights and property."

"In witness whereof, the said parties hereto have caused these presents to be signed in their respective names by their respective presidents or vice-presidents, and their respective corporate seals to be hereto attached and attested by their respective secretaries, on the 31st day of December, one thousand nine hundred.

THE MATHIESON ALKALI WORKS,

[CORPORATE SEAL.]

(U. S. rev. stamp $1, canceled.)

By EDWARD E. ARNOLD, *President.*
JOHN RUSSELL GLADDING, *Sec'y.*

THE CASTNER ELECTROLYTIC ALKALI COMPANY,

[CORPORATE SEAL.]

By JOHN G. AGAR, *Vice-President.*
J. F. VAN NAME, *Secretary.*

73 STATE OF RHODE ISLAND, }
County of Providence. }

"On this 24th day of January, in the year 1901, before me personally came Edward E. Arnold, to me known, who, being by me duly sworn, did depose and say: That he resided in Providence, Rhode Island; that he was the president of the Mathieson Alkali Works, one of the corporations described in, and which executed the above and foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order."

[SEAL.] GEO. H. BUSIEL,
Notary Public.

(U. S. rev. stamp $.10 cancelled.)

UNITED STATES OF AMERICA, }
State of Rhode Island and Providence Plantations. }

SECRETARY OF STATE'S OFFICE,
PROVIDENCE, *Jan. 25th*, 1901.

"I hereby certify that George H. Busiel Esquire, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument was at the time of taking such proof or acknowledgment a notary public in, and for the State of Rhode Island, and as such authorized by law to take depositions and the acknowledgment of deeds, and other instruments, and to administer oaths; that he was duly commissioned as appears of record and engaged; that I am well acquainted with his handwriting, and I furthermore believe that his signature to the said certificate of proof or acknowledgment is genuine."

"In testimony whereof, I have hereunto set my hand and affixed the seal of the State, the day and year above written."

CHARLES P. BENNET,
[SEAL.] *Secretary of State.*

(U. S. rev. stamp $.10 cancelled.)

74 "STATE OF NEW YORK, }
City and County of New York, } *ss.:*

"On this 25th day of January in the year 1901, before me personally came John G. Agar to me known and who being by me duly sworn did depose and say: That he resided in the city of New Rochelle, N. Y., that he was the vice-president of the Gastner Electrolytic Alkali Company one of the corporations described in, and which executed the above and foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order."

EDWARD A. FRESHMAN,
[SEAL.] *Notary Public, New York County.*

(U. S. rev. stamp $.10 cancelled.)

"STATE OF NEW YORK, } ss:
County of New York, }

"I, William Sohmer, clerk of the county of New York and also clerk of the supreme court for the said county, the same being a court of record,

"Do hereby certify that Edward A. Freshman, whose name is subscribed to the certificate of the proof — acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn, and duly authorized to take the same."

"And further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine."

"In testimony whereof I have hereunto set my hand and
75 affixed the seal of the said court and county the 14th day of February, 1901.

[SEAL.] WM. SOHMER, *Clerk.*

(U. S. rev. stamp $.10 cancelled.)

Recorded February 15, 1901, at 2 p. m.
SAMUEL H. PETTIT, *Clerk.*

The plaintiffs are informed and believe that in pursuance of the said conveyance, the property therein described has been delivered and surrendered to the defendant The Castner Electrolytic Alkali Company, and that the said company is now in possession thereof.

XV. The plaintiffs allege, on information and belief, that the ownership and use of the patents and other property embraced and described in the above conveyance by the Mathieson Alkali Works is essentially necessary to enable that company to carry on the business for which it was organized; that the above-mentioned conveyance of such patents and property in effect wholly destroys the business of that corporation, renders its capital stock utterly worthless, and deprives the creditors of the corporation, of whom there then were, and are, a large number, and for a large amount in the aggregate, of all remedy for the collection of their debts.

XVI. The plaintiffs are advised and charge that the above-mentioned conveyance, in the name of the said Mathieson Alkali Works, is *ultra vires*, fraudulent and void; that the defendant directors, as trustees and agents of and for stockholders, had no power or authority to convey away the plant, property and other patents of the company essential to the carrying on of its business.

The plaintiffs further allege that in view of the fraudulent
76 conveyance, and the misconduct herein specified and charged, the defendants, the directors of the said alkali works, are unfit and improper persons to have the charge and management of its affairs, and that a receiver of the said corporation should be appointed, and the defendants be enjoined as hereinafter prayed, and for the reasons above set forth the plaintiffs have not applied to the

said defendant The Mathieson Alkali Works to bring this action to set aside the aforesaid conveyance of its property and for other purposes, being advised that the directors of that corporation would not be proper persons to bring and prosecute an action in the name of the company, which was practically an action to redress the frauds they themselves had committed.

XVII. As above stated, the plaintiffs have but recently acquired the knowledge of the facts in regard to the said conveyance above set forth, and that such knowledge was obtained in the following manner:

The plaintiffs are informed and believe that the plaintiff, T. T. Mathieson, of England, is a creditor of the said Mathieson Alkali Works in the sum of over thirty-three thousand dollars, and the whole of this debt became payable on the first day of February of the present year, 1901. About the 18th of April of the present year Jefferson B. Conley of the said city of New York, as assignee of the said Mathieson, brought an action against the said alkali works for the recovery of the said debt and obtained a writ of attachment. It was in that proceeding that the above-recited conveyance was discovered and the fact communicated to the plaintiffs. The fraudulent concealments of the defendants above set forth have prevented the plaintiffs from obtaining knowledge of the names of all the present stockholders of the said alkali company, and the shortness of time has not permitted the plaintiffs to communicate with
77 such stockholders, as they do know of, but the plaintiffs have good reason to believe that when the facts in the premises become known to them all stockholders not in interest with the defendants will join in this action as plaintiffs.

The plaintiff- *is* advised that a stockholder, having knowledge that the directors of a corporation have made a fraudulent and voidable conveyance of the property of the corporation, must proceed with due diligence to set it aside, or that he will be barred of remedy by implied ratification; the plaintiffs, therefore, bring this suit in anticipation of the coming in of the other stockholders.

The plaintiffs pray: That the conveyance in the name of the said Mathieson Alkali Works, above mentioned, may be adjudged to be fraudulent and void, as to the stockholders of the said company, and that the same may be annulled, vacated and set aside; that a receiver of the said alkali works may be appointed; that the defendants, directors of the said corporation, may be enjoined from making any further dispositions of the property of the company; that the plaintiffs may have, and the said corporation be adjudged and required to make a full disclosure in respect to all the premises herein set forth and alleged; and that to the end of such disclosure the plaintiffs may have access to and inspection of all the books, records and papers of the said corporation, including stock book; that the defendant, The Castner Electrolytic Alkali Company, may be required to account in respect to all its acts and doings in the premises hereinbefore set forth, and to make good and pay over all damages sustained by the plaintiffs and by the said Mathieson Alkali Works by reason of such acts and doings, and that the said

Castner Electrolytic Company may be adjudged, and required to reconvey the above-described property and patents so wrongfully conveyed to it in the name of the said Mathieson Alkali Works as aforesaid; and that the said Castner Electrolytic Company may
78 be adjudged and required to account for and pay over all the income, earnings and revenue of the said property since the date of such conveyance; that the individual defendants, directors of the said Mathieson Alkali Works, may be compelled to account as agents and trustees of the said company for all their acts and doings in the premises above set forth; and that they may severally and respectively be adjudged and required to make good and pay to the said Mathieson Alkali Works, and to the plaintiffs, all loss and damage caused by their wrongful conduct in the premises as hereinabove set forth; and that the plaintiffs may have such other and further relief as may be just and equitable, together with the costs of this action.

79 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

THE SOUTHERN DISTRICT OF NEW YORK, *ss.:*

Willard U. Taylor, being duly sworn says:

That he is one of the attorneys for the plaintiff herein, and is familiar personally with the facts herein set forth in reference to the above-entitled action. That the complaint herein was verified by the plaintiff on or about the 15th day of March, 1901. That thereupon deponent placed the said summons and complaint in the hands of Mr. Andrew A. Osborne, for service; the affidavit of said Osborne setting forth his attempts to make said service on the defendant company and its officers is hereto annexed.

That after receiving the daily reports from said Osborne, and of his inability to make said service, deponent on or about April 4th, 1901, requested a certificate from the secretary of New York State, setting forth whether the said defendant corporation had designated a person upon whom process might be served.

That on or about the 6th day of April, 1901, deponent received from said secretary of state, a certificate stating that no such designation had been made, a copy of which is hereto annexed, and marked "Exhibit A."

That on or about the 4th day of April, 1901, deponent placed
80 in the hands of the sheriff of New York county copies of said summons and complaint to be served upon the president, secretary, treasurer, or persons performing similar offices of the defendant company.

That deponent had various talks with said deputy sheriff, having personal charge of said service, which said deputy informed deponent that he could find, after repeated attempts, no such officer, or any person who would accept service on behalf of said defendant

company of said summons and complaint. The said sheriff thereupon on the 8th day of April, 1901, delivered to the deponent his certificate of inability to serve said defendent company, which certificate is hereto annexed, and marked "Exhibit B." and made a part hereof.

That the original certificate of the secretary of state, "Exhibit A." together with the original certificate of the sheriff, "Exhibit B." together with the original affidavits by said Lowe of service of said summons and complaint on the directors, Wilson and Agar, are annexed to the original summons and complaint filed in the office of the clerk of the county of New York, on or about the 18th day of April, 1901.

That after receiving said certificate from the secretary of state, together with said certificate of the sheriff, and the statements of said Osborne, and after making several attempts personally to locate said officers, deponent instructed said Lowe to serve said summons and complaint on Messrs. Wilson and Agar, as directors of said defendant company, which was done.

That deponent believes great injustice would be done to the plaintiff should said service be set aside.

WILLARD U. TAYLOR.

Sworn to before me this 4th day of June, 1901.

[SEAL.] JOHN CUPP LOWE,
Notary Public, No. 132, New York County.

81 EXHIBIT "A."

STATE OF NEW YORK:

Office of the secretary of state.

ALBANY, *April 4th*, 1901.

MacFarland, Taylor & Costello, #63–65 Wall street, New York city.

DEAR SIR: I have made diligent examination in this office for a statement under section 16, of the general corporation law and a designation by the Mathieson Alkali Works of a person upon whom summons may be served in this State, pursuant to section 432 of the Code of Civil Procedure of said State, and upon such examination, I find no such statement or designation by said corporation, on file in this office.

Yours respectfully, JOHN T. McDONOUGH,
Secretary of State.

82 "EXHIBIT B."

Supreme Court, New York County.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

CITY AND COUNTY OF NEW YORK, *ss:*

I certify that I have made proper and diligent effort to find the above-named defendant, its president, treasurer or secretary, in my county so as to serve the said defendant, its president, treasurer or secretary with the process hereto annexed. That neither the president, treasurer or secretary can be found with due diligence, and that the place of sojourn of the said president, treasurer or secretary cannot be ascertained.

Wherefore I return the said defendant, its president, treasurer and secretary as not found.

Dated, New York, April 8, 1901.

WILLIAM F. GRELL, *Sheriff.*
G. H. W.

THOMAS HALLIGAN, *Deputy.*

83 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Andrew A. Osborne, being duly sworn says that he is over the age of twenty-one years of age. That he is an expert process-server by profession, and has had long experience in that class of work. That on or about the 5th day of March, 1901, he was retained by Messrs. MacFarland, Taylor & Costello to ascertain the whereabouts in the city of New York or elsewhere of the officers of the Mathieson Alkali Works, and also to discover the name or names of the persons connected with said company, and performing duties similar to those performed by a president, secretary or treasurer of a corporation.

That deponent pursued the course of his said investigation, which continued from the said 5th day of March, 1901, up to and including the first week in April; for a period of two weeks he devoted his whole time and attention to such investigation, and for the balance of said period he devoted a portion of each day.

That he attended at No. 31 Pine street in the city of New York at offices on the second floor front of said building occupied, as he is informed and believes by Arnold, Hoffman & Company, and by the Mathieson Alkali Works corporation.

84 That when deponent first begun visiting said place the name Mathieson Alkali Works appeared upon the doors, and upon the doors of one of the rooms of said officers appeared also the name of the Mathieson Alkali Works, which latter office deponent believes to have been the office of the board of directors where the regular monthly meetings of the said company were held, as he was informed by the employees and persons connected in and around said building, that the directors of or persons connected with the Mathieson Alkali Works gathered in said room about once a month.

That the person whom deponent almost always saw in charge of said office was a person named Frederick, but who always denied that he had any connection with said Mathieson Alkali Works, directly or indirectly, or that he knew of any person who had any connection with the said Mathieson Alkali Works, who could be found in the State of New York. Further than this statement, except that Mr. Arnold, the president of the company, and Mr. Gladding the secretary of the company, resided in Providence, the said Frederick refused to say anything further in reference to said company.

Deponent made various inquiries of firms doing a similar business as the Mathieson Alkali Works, but in each instance said firm stated that they could give no information concerning the said company.

That deponent called also to see Richard T. Wilson, one of the directors of said company, but was informed that the said Richard T. Wilson was at that time out of the city.

Deponent, therefore, reported to said MacFarland, Taylor & Costello, that it was impossible for him to make service of any papers upon, or ascertain the whereabouts within the State of the
85 president, secretary or treasurer of the said company, or to find any person connected in any way with said company, who performed any functions of said officers, or who could be served with process or papers in any action or proceeding against the said company.

ANDREW A. OSBORNE.

Sworn to before me this 28th day of May, 1901.
[SEAL.] JOHN CUPP LOWE,
Notary Public, No. 132, New York County.

86 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

THE SOUTHERN DISTRICT OF NEW YORK, ss:

John C. Lowe, being duly sworn says that he is a clerk in the office of MacFarland, Taylor & Costello, attorneys for the plaintiff herein. That he is over twenty-one years of age. That he has charge of the service of the summons and complaint in the above-entitled action upon the defendants. That during the latter part of the

second week in April, 1901, deponent received two copies of the summons and complaint herein for service respectively upon Richard T. Wilson and John G. Agar, providing he could not serve the same upon Edward E. Arnold or upon John Russel Gladding, or any other officer of the Mathieson Alkali Works. That deponent was informed that the said Mathieson Alkali Works had its office in New York city at # 31 Pine street, this being the address printed upon the letter-heads of the defendant company, one of which is hereto annexed, and made a part hereof, marked Exhibit A. Deponent attended at said office on the second floor of the building at said address, upon the door of which appeared the name of the defendant company. That at said offices, deponent saw a gentleman, who styled himself Mr. Frederick, and who informed deponent that he, personally, had no connection with the Mathieson Alkali Works.

That no officer of the said Mathieson Alkali Works to wit:
87 the president, secretary or treasurer was within the State of New York, or had been for some little time past, and was not expected for some time to come. That he could not tell deponent whether any officer of said company would ever come into the State of New York.

That thereafter to wit; on the 17th day of April, 1901, in the middle of the next week, deponent again called at said office, and substantially the same conversation was had with Mr. Frederick.

That thereafter on the 18th day of April, 1901, deponent again attended at said office with the same result after having also inquired for the said officers of the said company of other persons connected with the building. Deponent thereupon in pursuance to directions of said firm *he* attended at the office of Richard T. Wilson, on the 18th day of April, 1901, at # 33 Wall street, and served the summons and complaint in this action upon the said Richard T. Wilson, who said he was a director, and inquiring of said Richard T. Wilson, at the time of said service whether the said Wilson was then a director of the defendant company The Mathieson Alkali Works. Whereupon the said Wilson told deponent that he was. Deponent thereupon delivered a true copy of said summons and complaint as aforesaid to the said Richard T. Wilson personally and leaving the same with him.

That deponent further says that he knew the person served as aforesaid to be Richard T. Wilson, one of the directors of The Mathieson Alkali Works, the corporation mentioned and described in the said summons, as the defendant in this action.

88 That thereupon deponent attended at the office of John G. Agar, # 31 Nassau street, and served a copy of said summons and complaint upon the said John G. Agar, in precisely the same manner as he had served the same upon the said Richard T. Wilson, with the exception that the following conversation at the time of said service was had. That deponent asked the said Agar if he was one of the directors of the Mathieson Alkali Works. The said Agar replied "Yes," asking deponent if he was serving him as a director; deponent replying that he was. The said Agar, thereupon stated

that "It is all right," or words to that effect, and took the paper and laid it beside him on his desk.

That deponent had previously made several other inquiries of the present whereabouts of the president, secretary and treasurer of the defendant company, at the office of said company and elsewhere; the dates of which he does not precisely recall, but had always been unable to learn the whereabouts of said officers or any of them.

JOHN C. LOWE.

Sworn to before me this 28th day of May, 1901.

[SEAL.] JOHN D. KAPS,

Notary Public No. 93, New York County.

89 Ex. A.

The Mathieson Alkali Works.

Edward E. Arnold, president, Providence; 53 Canal St., Providence, R. I.

John Russell Gladding, treas. & sec'y, Providence; 31 & 33 Pine street, N. Y.

Julian S. Goetchius, ass't treas., Saltville, Va.

Works at Saltville, Va.; Niagara Falls, N. Y.

Ex. A.

PROVIDENCE, R. I., *August* 31, 1900.

Messrs. Foley, Wray & Taylor, 71 Wall street, New York.

DEAR SIRS: Yours of August 30th is at hand.

We have referred the matter to our counsel, Messrs. Agar, Ely & Fulton and to whom we refer you in the matter.

Yours very respectfully,

EDWARD E. ARNOLD, *President.*

90 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS.

THE SOUTHERN DISTRICT OF NEW YORK, *ss:*

Arthur W. Smith, being duly sworn says:

That he is a certified public accountant, located in the city of New York, and senior member of the firm of Messrs. Smith, Reckitt, Clarke & Co. That he received from plaintiff's assignor many months before suit was started on said claim a memorandum of the same from Mr. T. T. Mathieson, with a request that he investigate the matter and report.

That deponent had interviews with Mr. Edward E. Arnold, at

the office of the defendant company, at No. 31 Pine street, New York city, with reference to said claim, and had numerous correspondence with said company at said address.

That since the 1st of January, 1901, deponent has made repeated attempts to see said officers, at said address, but has never been able to obtain a further interview.

ARTHUR W. SMITH.

Sworn to before me this 6th day of June, 1901.
[SEAL.] JOHN CUPP LOWE,
Notary Public, No. 132, New York Co.

91 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Willard U. Taylor, being duly sworn says:

That he is one of the attorneys for the plaintiff, and that he is familiar with the above-entitled action. That in the month of July, 1900, he had a conference with John G. Agar, in reference to the payment of the claim on which this action is brought, which was for salary of plaintiff's assignor. That Mr. Agar at that time informed deponent that said claim would soon be paid, as he was then conducting negotiations with Mr. Mathieson by which he hoped that Mr. Mathieson would receive the securities of the defendant company in payment, or as part payment of said claim, and if said matter could not be thus adjusted it would otherwise be soon paid. At said conference deponent asked Mr. Agar in reference to the financial standing of the company, and why Mr. Smith had been refused a financial statement at the annual meeting if the company was prosperous. Mr. Agar then told the deponent that the bookkeeper, who had charge of the financial affairs of the company was on his vacation, and away from the city of New York for a few days, but as soon as he returned he, Mr. Agar would have a statement made up and delivered to deponent. He further stated that the books of the company were then in the city of New York,
92 and that he was personally familiar with them, and knew the financial condition of the company in which he had a large personal interest, and also that Mr. R. T. Wilson had immediate supervision of said books of account, and had charge of the finances of the concern.

Deponent left his card with Mr. Agar, who promised to notify him of the facts he sought and other matters concerning the company, but he never did.

That on the 10th day of January, 1901, deponent attended with Mr. Arthur W. Smith, at No. 31 Pine street, New York city, where he had been informed the offices of the company were located. That

on the directory boards located on each side of the hallway of said building immediately on entering, and elsewhere in the hallways of said building appeared among the names of other tenants, the name The Mathieson Alkali Works, floor 2, rooms 7–8.

That upon going to the second floor in large letters on the doors of the rooms 7–8, appeared as follows:

ARNOLD, HOFFMANN & CO.,

AGENCY OF

THE MATHIESON ALKALI WORKS.

Upon the left on entering said offices was a large room separated from the other offices, which contained a long table, chairs and the general outfit of a directors' office, upon the door of which appeared the words

THE MATHIESON ALKALI WORKS.

That although deponent attended several times at said offices, he was unable to find any of the officers of the company present, although informed by telephone before said visits of their
93 presence, deponent, therefore, assumed said officers intentionally avoided him.

That deponent is informed that at the address in Providence, which is given as an address of the defendant company's office to wit: at # 53 Canal street, the only visible sign of said company in and about said building is a small tin sign separated from all other signs of the building, and at the left of a stairway, which ascended to the second floor not over a foot and a half square bearing the words The Mathieson Alkali Works, whereas on each side of said doorway is a large brass sign bearing the words:

ARNOLD, HOFFMANN & CO., INCORPORATED.

Other signs of Arnold, Hoffmann & Co., are printed on the entire front of the building.

From these facts to wit; the statement made by Mr. Agar together with the appearance of the office at New York, and at Providence, deponent verily believes that the chief office of said company was at the city of New York.

WILLARD U. TAYLOR.

Sworn to before me this 6th day of June, 1901.

JOHN CUPP LOWE,

[SEAL.] *Notary Public No. 132, New York Co.*

(Endorsed:) United States circuit court, southern district of New York.—Jefferson B. Conley, plaintiff, *vs.* The Mathieson Alkali Works, defendants.—Affidavits in opposition to the motion to set aside the service of process.—MacFarland, Taylor & Costello, attorneys for plaintiff, 63 Wall street, New York city.—U. S. circuit court, Filed Jun- 12, 1901, John A. Shields, clerk.

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94 U. S. Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY
against
THE MATHIESON ALKALI WORKS.

Motion to Set Aside Service of Summons After Removal of Cause.

LACOMBE, *C. J.:*

If the facts are as stated in the affidavits submitted by defendants, namely, that at the time of the service of the summons, and for some months prior thereto, the defendant corporation had entirely ceased doing business within this State, the application should be granted. The cases of Goldey *v.* Morning News, 156 U. S., 518 and Wabash Western Railway *v.* Brow, 164 U. S., 271, are controlling. Whether or not the defendant owns property within the State which is subject to attachment, as appears to have been the case in Purdy *v.* Wallace Company, 81 F. R. 513, is immaterial inasmuch as service in this case was not made upon the garnishees. The affidavits presented by the complainant are mainly on information and belief, but annexed to them is a letter, the genuineness of which is not questioned, which bears date March 15th, 1901, (two months and a half after the alleged cessation of business at Niagara Falls) and signed by the treasurer of the defend-
95 ant corporation, in which he speaks of the plant at Niagara Falls as still being operated by the defendant. Under these circumstances the court would not be warranted in granting this motion, in view of the conflict of fact. If, however, the defendant feels assured that the apparent discrepancy can be explained, and is willing to pay the expenses of a reference, it may be sent to a master to take testimony and report to the court whether or not at the time of the service of the summons the defendant corporation was doing business within this State.

(Endorsed:) Circuit court of the United States, for the southern district of New York.—Jefferson B. Conley, against The Mathieson Alkali Works.—Opinion, Lacombe, C. J.—U. S. circuit court, Filed Jun- 12, 1901, John A. Shields, clerk.

96 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

Supplemental Memorandum in Opposition to the Motion to Set Aside Service of the Summons.

The sole object of this memorandum is to invite the attention of the court to Meyer *v.* Pa. Lumber Co. in the last issue of advance sheets of the Federal Reporter, vol. 108, section No. 2, p. 169. The case embraces the distinction which it was the object of the

last memorandum to make. For in the case at bar the officers served are permanent residents of this city, not transient people, residing elsewhere. Besides it is not denied that by the by-law of the defendant this city is the place where directors are required to hold meetings.

In the case referred to Judge Hazel points out *two* grounds of jurisdiction.

1. That the cause of action arose within the State, and that the directors served had a permanent residence in the State, which is exactly the case here, only the present case is stronger, because the defendant company has adopted this State as the place of meeting of the board of directors. Now, a board of directors in judgment of law transacts all the business of a corporation at the place of its meetings. Of course, I do not mean the merely mechanical business of employees of the different classes.

97 2 The other ground of jurisdiction which Judge Hazel found in the case before him was the fact that the company was actually doing business in the State. But that fact was not essential in the Meyer case, the first ground was enough. Nor, is it essential here, and for the same reason. But if it were essential could it be rightly said that a corporation is not doing business in a State within the meaning of the code, where, by an expressed provision of its by-laws, directors must meet once a month and carry on there the entire government of the corporation.

Respectfully submitted.

W. W. MacFARLAND.

It is hardly needful to say that a copy of each memorandum sent to the court is sent also to the defendant's attorneys.

(Endorsed:) United States circuit court, southern district of New York.—Jefferson B. Conley, plaintiff, *vs.* The Mathieson Alkali Works, defendant.—Supplemental memo. in opposition to the motion to set aside service of the summons.—MacFarland, Taylor & Costello, attorneys for plaintiff, 63 Wall St. New York city.—Put on file. E. H. L. U. S. circuit court, Filed Jul- 22, 1901, John A. Shields, clerk.

98 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

Supplemental Memorandum for Defendant upon Motion to Set Aside Summons.

Since the argument and submission of this motion and since its decision by the court, plaintiff's counsel has served three additional memorandums styled respectively: "Further" "supplemental" and "additional," calling attention to additional cases. The last submitted today.

Defendant's counsel begs leave to submit the following in its behalf in reply:

First. The motion has been argued and decided. A motion for a reargument has been made by plaintiff and is under advisement. If a reargument is granted, further discussion of cases will be permissible upon which defendant will have leave to be heard. If a reargument is denied, the proper course for plaintiff's counsel will be an appeal.

Second. None of the cases cited by plaintiff's counsel are pertinent or material to the motion.

Tbotle v. Coleman, cited by plaintiff's counsel in his "further memo.," was cited in his argument before the court and disposed of by the decision subsequently made by the court. In this case, however, the defendant is not a corporation, and, therefore, it has no bearing upon this motion.

99 In the case of Meyer *v.* Pa. Lumber Co., 108 F. R. 169 cited by plaintiff in his "supplemental memo.," Judge Hazel found that the defendant company was doing business within this State.

Third. In the case of *Empire Mining Co. vs. Propeller*, 108, *F. R.* 901, cited by plaintiff in his third "additional memo." a totally different question is presented upon a motion to remand for a lack of any jurisdiction. This is a familiar motion and has invariably been decided in the same way as in this Empire Mining Company case, which presents nothing new. See *Stalker v. Pullman's Palace Car Co.* 81 *F. R.*, 989.

Simonton, C. J., in this Empire Mining Company case at page 903, recognizes the difference between that case and the Goldey case, (156 U. S. 525), approving it and stating that there is no parallel between the two cases.

Fourth. Defendant's motion to remove is not based on decisions of the circuit court but upon the established rule of the United States Supreme Court as determined in the following cases, to which the attention of the court is again respectfully called upon this motion as conclusive upon the defendant's application in the matter:

Goldey *v.* Morning News, 156 U. S. 518.
Wabash Western Railway *v.* Brow, 164 U. S. 271.
Barrow Steamship Co. *v.* Kane, 170 U. S. 111.

In this Barrow Steamship Company case the court uses the following language which seems to be the answer to all the cases cited by plaintiff's counsel:

"Upon the fundamental principle that no one shall be condemned "unheard, it is well settled that in a suit against a corporation of "one State, brought in a court of the United States held within "another State, in which the corporation neither does business, nor "has authorized any person to represent it, service upon one of its "officers or employés found within the State will not support
100 "the jurisdiction, notwithstanding that such service is recog- "nized as sufficient by the statutes or the judicial decisions of "the State."

See also Life Insurance Co. *vs.* Spratley, 172 U. S. 602 and at p. 610.

Fifth. The defendant has elected to take a reference under the decision of the court already made herein and filed June 12th, 1901, and the only question now is with respect to the form of order for such reference.

Aug. 5th, 1901.

ALFRED ELY,
Counsel for Defendants.

(Endorsed:) U. S. circuit court, southern district of N. Y.—Jefferson B. Conley, plaintiff, vs. The Mathieson Alkali Works, defendant.—Defendant's memorandum in reply.—Agar, Ely & Fulton, attorneys appearing specially only, for defendant, 31 Nassau street, New York city.—U. S. circuit court, Filed Aug. 9, 1901. John A. Shields, clerk.

101

CONLEY
vs.
MATHIESON ALKALI WORKS.

Memorandum for Defendant upon Settlement of Order.

The plaintiff's proposed order is not in accordance with the decisions of the court. The only question of fact to be considered upon the reference is "whether or not at the time of the service of the summons, the defendant corporation was doing business within this State."

It is of no consequence whether the contract upon which this action was brought was made in this State, or whether the directors resided permanently in this State, or whether the meetings of the board of directors had at any time been held in this State. None of these questions are material or relevant to the issue to be decided upon the decision of the court.

The order as proposed by the defendant conforms to the court's decision.

Aug. 1, 1901.

ALFRED ELY,
Defendant's Counsel.

102 At a stated term of the United States circuit court for the southern district of New York, held in the United States court-house, in the city of New York in said district, on the 9th day of August, 1901.

Present: Hon. E. Henry Lacombe, justice.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant. } Order of Reference.

This cause having been duly removed from the supreme court of the State of New York, New York county, on the petition of the defendant, appearing in said court specially for the purpose of such removal only, and a motion having been made herein by the defendant, appearing in this court specially and for the purpose of

such motion only, to set aside the summons in this action and pretended service thereof on the defendant, and such motion having come on regularly to be heard at a stated term of this court,

And the defendant having read and submitted the order *of* show cause granted herein May 23, 1901, upon which said motion was made, the affidavit of Alfred Ely, verified May 23, 1901, of Edward E. Arnold, verified May 28, 1901, of Richard T. Wilson, verified May 29, 1901, and the affidavits of John G. Agar, verified respectively June 5, 1901, and June 11, 1901, in support of said motion, and plaintiff having read and submitted the affidavits of Jefferson B. Conley, verified May 3, 1901, of Willard U. Taylor, re-
103 spectively verified June 4, 1901 and June 6, 1901, of Andrew A. Osborne, verified May 28, 1901, of John C. Lowe, verified May 28, 1901, and of Arthur W. Smith, verified June 6, 1901, in opposition thereto, and a question of fact having arisen upon such papers,

Ordered:

First. That the matter be and hereby is referred to Arthur H. Masten, Esq., as a master of this court to take testimony and report to this court whether or not at the time of the service of the summons in this action the defendant corporation was doing business within the State of New York.

Second. That said motion and its determination stand adjourned until the report of said master be received.

Third. That for the purpose of this enquiry, the referee be and he is hereby authorized and empowered to summon and examine witnesses and to call for the production of books and papers.

(S'g'd) E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of N. Y.—Jefferson B. Conley, plaintiff, *vs.* The Mathieson Alkali Works, defendant.—Order of reference.—Agar, Ely & Fulton, attorneys, appearing specially only for defendant, 31 Nassau street, New York city.—Service of a copy of within order this 30th day of July, 1901,
104 hereby admitted. MacFarland, Taylor & Costello,—U. S. circuit court, Filed Aug. 9, 1901, John A. Shields, clerk.

105 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

It is hereby stipulated that the signing of the testimony by the witnesses, whose testimony was taken by a stenographer before Arthur H. Masten, as master herein, be waived.

Dated New York city, December 17th, 1901.

MACFARLAND, TAYLOR & COSTELLO,
Attorneys for Plaintiff.
AGAR, ELY & FULTON, *Att'ys for Defendant.*

Dec. 19th, 1901.

106 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

Proceedings before Arthur H. Masten, Esq., as master in chancery of this court, under and in pursuance of an order thereof bearing date the 9th day of August, 1901.

NEW YORK, *August* 28, 1901—11 o'clock a. m.

The parties met at the master's office pursuant to notice.

Appearances.

Messrs. MacFarland, Taylor & Costello for plaintiff.
Messrs. Agar, Ely & Fulton for defendant.
Mr. Alfred Ely of counsel for defendant appearing specially.

107 Mr. Ely asks for an adjournment to September 5th, on the ground of the absence of necessary witnesses, all of whom reside without the State, who are on their vacation.

Mr. Taylor objects.

The master requests Mr. Ely to place upon the record the names of the witnesses on account of whose absence an adjournment is requested.

Mr. Ely names Mr. Gladding, the president and treasurer of the company.

Mr. Taylor objects to any adjournment and states that Mr. Ely has had ample opportunity to have Mr. Gladding present; that he understands that Mr. Gladding is within the State of New York and but a few hours' ride from the city.

Mr. Taylor files with the master a notice to produce certain papers at today's hearing, served upon defendant, and asks Mr. Ely, counsel for and one of the directors of the company, to produce them.

The master adjourns the hearing to Tuesday, September 3, 1901, at 11 o'clock a. m.

Mr. Taylor excepts to the master's adjournment. At 12.30 p. m. Adjourned to Tuesday, September 3, 1901, at 11 a. m.

108 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

NEW YORK, *November* 7, 1901—2 o'clock p. m.

Present: The master; Mr. MacFarland and Mr. Taylor for the plaintiff; Mr. Agar and Mr. Alfred Ely for the defendant.

Mr. Ely opened the case on behalf of the defendant.

It is admitted that the Mathieson Alkali Works is a corporation duly organized and existing under the laws of the State of Virginia at all the times mentioned in the complaint, and also that the Cast-

ner Electrolytic Alkali Company was duly incorporated
109 under the laws of the State of Virginia about July 29, 1900, and still exists as such corporation duly organized.

JOHN RUSSELL GLADDING, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. ELY:

Q. Where do you reside?
A. Providence, Rhode Island.
Q. How long have you resided there?
A. Oh, for forty years.
Q. Where is your place of business?
A. In Providence.
Q. What was your business on the 18th day of April, 1901?
A. I was treasurer of the Mathieson Alkali Works.
Q. The defendant in this action?
A. Yes, sir.
Q. About how long prior to that time had you been treasurer?
A. About five or six years.
Q. Were you familiar with the affairs of that company on the 18th day of April, 1901, and for some years prior thereto?
A. Yes, sir.
Q. Did you have personal knowledge of the affairs of the company?
A. Yes.
Q. What was the business of the Mathieson Alkali Works?
A. The manufacture of soda ash, caustic soda, salt, bicarbonate of soda.
110 Q. On April 18 where was it engaged in this manufacture?
A. Saltville, Virginia.
Q. Did it on that day have any other manufacturing plant or manufacturing establishment?
A. It did not.
Q. Except the one at Saltville, Virginia?
A. Except the one at Saltville, Virginia.
Q. Have you often been to Saltville?
A. Yes.
Q. You are not a technical man or familiar with the manufacture, from a technical standpoint, are you?
A. Not specially.
Q. You have a general knowledge of the various plants of the company in Saltville, Virginia?
A. Yes.
Q. Will you give us a brief description of the plants that were there in Saltville, Virginia the first two weeks in April, 1901, as to their extent?
A. There were works of large extent at that place, on what is known as the ammonia-soda process—the process generally followed for the manufacture of soda ash and caustic soda, and also manufactured, as I said, salt and bicarbonate.

Q. Has the company a very large property there?
A. It has a large investment there, both in land and buildings and machinery and improvements.
Q. Has the company an office in Saltville, Virginia?
A. Yes, sir.
Q. How long has it had an office there?
111 A. Ever since its organization.
Q. What official is in charge of that office there?
The WITNESS: Do you mean of the work?
Mr. ELY: I mean of the office.
A. Mr. Goetchrus.
Q. What office?
A. Assistant treasurer.
Q. Did this company on April 18th, 1901, have any other office or place of business except at Saltville, Virginia?
A. At Providence, Rhode Island.
Q. Who was in charge of the office of the Mathieson Alkali Works at Providence, Rhode Island at that time?
A. Mr. Arnold and myself.
Q. What was Mr. Arnold's official position?
A. Mr. Arnold is president of the Mathieson Alkali Works.
Q. You say he was president on April 18, 1901?
A. Yes.
Q. How long had Mr. Arnold been the president?
A. Since the organization of the company.
Q. About when was that?
A. In 1893 or thereabouts. 1892 perhaps.
Q. Was Mr. Arnold on April 18, 1901, and had he been prior to that time, the chief executive head of the company?
A. Yes, sir.
Q. And had Mr. Arnold conducted the business of the company as such executive head?
A. Yes, sir.
112 Q. And had you conducted the business of the company as devolved on you as treasurer?
A. Yes, sir.
Q. Where had you and he during that time conducted the business of the company?
A. At Providence.
Q. Did you hold any other office than that of treasurer?
A. The secretary of the company.
Q. Then you were the secretary and treasurer of the company?
A. Yes, sir.
Q. You were both secretary and treasurer on April 18, 1901?
A. Yes, sir.
Q. And you had been for several years?
A. Yes.
Q. Mr. Goetchrus, whom you referred to as assistant treasurer, was your assistant? He was assistant to you as treasurer?
A. Yes, sir.

Q. At the date in April we have spoken of did the Mathieson Alkali Works have any property in the State of New York?

A. It had not.

Q. Did they have any office in the city of New York?

A. They had not.

Q. Were they on April 18, 1901, or for some months prior thereto, doing business in the State of New York?

A. They were not.

Q. Do you know whether at any time during the year 1900 the Mathieson Alkali Works had any property in this State of New York?

A. They had.

113 Q. Can you describe that property in a general way?

A. There was a plant of approximately two thousand horse-power, operating the so-called Castner electrolytic process for the manufacturing of bleaching powder and caustic soda.

Q. By electricity?

A. Yes, sir.

Q. Where was this located?

A. In Niagara Falls, New York.

Q. What disposition did the Mathieson Alkali Works make of that plant?

A. They sold it to the Castner Electrolytic Alkali Company.

Q. About when was this transaction made?

A. December 31, 1900.

Mr. MacFarland: I move to strike out the testimony of the witness on that subject, as a matter of proof by record.

The Master: I think I will take the testimony and give you an exception.

Exception by Mr. MacFarland.

Q. Have you personal knowledge of that sale and transfer?

A. Yes.

Q. Can you tell us in a general way what that sale and transfer covered?

A. It covered all the property at Niagara Falls and all the Castner patents.

114 Q. Is it true that it covered, in general terms, all the property that the Mathieson Alkali Works had had in the State of New York at that time?

A. It covered everything that the Mathieson Alkali Works had at that time in the State of New York.

Q. Had this transaction, sale and transfer, been under consideration and negotiation for some months?

A. Yes, sir.

Q. When you refer to December 31, what do you mean by that date?

A. I mean the instrument was made as of December 31, 1900.

Q. That is, the deed of conveyance was dated that day?

A. Yes, sir.

Q. When did the Mathieson Alkali Works actually turn over this property to the Castner Company?

A. Some time in the month of January.

Q. Some time in the month of January, 1901?

A. Yes.

Q. Has the Mathieson Alkali Works had any interest in that property since?

A. None whatever.

Q. Has the Mathieson Alkali Works had any interest in the Castner Electrolytic Alkali Company, the purchaser?

A. It owns the stock of the company.

Q. Then, since about January, 1901, the Mathieson Company has been a stockholder in the Castner Company?

A. Yes, sir.

115 Q. So long as the Mathieson Company owned the plant at Niagara Falls did it maintain a working office there at Niagara Falls?

A. Yes, sir.

Q. What became of that office, so far as the Mathieson Alkali Works was concerned, upon the sale of this plant at Niagara Falls?

A. It ceased to have interest in the office when it sold the property.

Q. The whole thing was turned over to the Castner Company?

A. Yes, sir.

Q. You know many of the stockholders of the Mathieson Alkali Works by name, if not personally?

A. Yes, sir.

Q. Do you know by name a man by the name of James A. Pell, who resides in England?

A. Yes, sir. Not personally, but that he is a stockholder.

Q. Have you had any correspondence with him in the matter of the affairs of the Mathieson Alkali Works?

A. Yes, sir. Several letters have passed between us.

Q. There appears among the papers in this case, attached to an affidavit of the plaintiff, verified May 3, 1901, what purports to be a copy of a letter written by you to James A. Pell, dated March 15, 1901. I show you the copy and wish you to read it.

(The witness does so.)

A. That appears to be a true copy of the letter that I wrote, so far as I can recall.

Q. So far as you can recall you wrote such a letter?

A. Yes, sir. That appears to be a true copy.

116 Q. Had you received a letter from Mr. Pell, dated about March 5, 1901?

A. I think that letter so states.

Q. I asked you if you had?

A. Yes, sir, I had.

Q. Had you received other letters from him prior to that time?

A. Yes, sir, several.

Q. And had you replied to them?

A. Yes sir.

Q. Was this letter of March 5, 1901 written in reply to a previous letter of yours, or subsequent to the receipt of your previous letter?

A. It was certainly written subsequent to the other correspondence, yes, sir. It followed in order.

Q. Had you previously written Mr. Pell of the proposed sale of the Niagara plant to the new company?

A. Yes, sir. I told him what was intended to be done and what was done.

By Mr. MACFARLAND:

Q. How did you tell him? By letter?

A. Yes, sir.

Mr. MACFARLAND: Then I insist on the letter being produced. I do not propose to have oral testimony of the contents of written documents taken in the place of the documents themselves, if I can help it.

Mr. ELY: Go on and answer the question.

Mr. MACFARLAND: I made an objection.

117 The MASTER: You want to have that answer stricken out?

Mr. MACFARLAND: I object to his testifying as to the contents of the letter.

The MASTER: I will allow him to testify to the fact that he wrote on this subject, but as to what he said in the letter, or the purport of it—of course he is required to produce the letter.

Mr. ELY: How can we produce a letter when it is in England?

The MASTER: You can produce a copy of it if you have it.

Mr. ELY: We will do that at the proper time of course.

By Mr. ELY:

Q. Had you written the details of the proposed sale and transfer of the Niagara plant?

A. I had written the general statement of the facts, sufficient to enable him to understand it.

Q. And this copy of this letter, written on March 15, was one of the series of letters which had passed between you?

A. Yes sir.

Q. From him to you and you to him?

A. Yes sir.

Mr. ELY: I ask the counsel for the plaintiff——

Mr. MACFARLAND: I object to that.

118 The MASTER: You can put your statement on record.

Mr. ELY: I ask him if he has the original letters from Mr. Gladding to Mr. Pell, and, if he has, if he will produce them?

Mr. MACFARLAND: The fact is we have not got the originals.

Q. I ask you whether on March 15, 1901, the date of this letter, the Mathieson Alkali Works owned the plant at Niagara Falls which you have referred to as belonging to it in 1900?

A. It did not.

Q. Did it on March 15, 1901, have any interest in any property in Niagara Falls?

A. No.

Q. Did it have any interest of any kind in the Castner Electrolytic Alkali Company except as a stockholder of that company?

A. No.

Q. Was the Mathieson Alkali Works on March 15, 1901, or at any time between March 15, 1901, and April 18, 1901, engaged in putting up any additional plant at Niagara Falls?

A. No.

Q. Was the Mathieson Alkali Works at that time, or during that period of time, engaged in doing anything at Niagara Falls?

A. No.

Q. Was the plant at Niagara Falls which was operating the Castner patents, which had been previously sold and delivered, as
119 you have testified, to the Castner Electrolytic Alkali Company being enlarged during the month of March, 1901?

A. The enlargement began there some time ago. I think they were being, or had been at that time.

Q. Or they were at least contemplated?

A. Yes, sir.

Q. Who was engaged in doing or planning and prosecuting those enlargements?

A. The management of the Castner Company.

Q. The Castner Electrolytic Alkali Company?

A. Yes.

Q. You have stated that the Mathieson Alkali Works was a large stockholder of the Castner Electrolytic Alkali Company. Then of course it would profit by any earnings declared as dividends by the Castner Electrolytic Alkali Company, as a stockholder: Is that so?

A. Yes.

Q. I call your attention to the following part of your letter to Mr. Pell, of March 15, 1901: After callir , Mr. Pell's attention to the fact that the so-called Castner patents have been operated by a two thousand horse-power plant at Niagara Falls, you proceeded to say that this has gone on successfully and is today producing highly satisfactory results, in consequence of which we are at present about to put up additional plants at that point of a capacity equal to twice that already installed, which we anticipate will largely in-
120 crease the earnings of the company, and ask you whether you meant by that that the Mathieson Alkali Works——

Mr. MacFarland: I object to that question—what he meant by that. We can tell what he meant by that.

The Master: That is objectionable.

Q. What did you mean by that?

Mr. MacFarland: We object to his stating what he meant.

Objection sustained.

Mr. Ely: I withdraw the question. Let it be crossed out.

Mr. Taylor: Let it stand on the record.

Mr. ELY: Can I withdraw the question from the record?

The MASTER: Certainly you are at liberty to withdraw it on the record, but counsel states, as I understand it, that they do not wish it to be expunged. They wish the question to remain as withdrawn after the objection is noted.

Mr. MACFARLAND: We want the record to remain as it is.

The MASTER: I shall direct the stenographer to note that the question is withdrawn.

121 Q. Now I will repeat the question up to the point where I left off, and ask you whom you referred to as putting up the additional plant?

Mr. MACFARLAND: I object to that. The letter must speak for itself. We cannot have new letters written for the occasion by this witness now.

The MASTER: It is a question as to the form. I will let him answer it.

Exception by Mr. MacFarland.

A. To the Castner Electrolytic Alkali Company, of which the Mathieson Alkali Works was the stockholder.

Mr. MACFARLAND: I must insist that the letter shall be put in evidence before there can be any examination upon it.

The MASTER: You had better have it marked and identified.

Mr. ELY: I have identified it by referring to the affidavit to which it is attached, and I have referred to the letter by its date.

Mr. MACFARLAND: If there is to be an examination of this letter I want it where I can examine it and examine upon it without asking somebody's favor to let me see it.

The MASTER: As I understand it, the letter is a part of the papers which are on file in this matter?

Mr. MACFARLAND: Yes.

122 The MASTER: It is therefore before me, under the equity rule. I think, however, it should be marked or identified by some other mark than its mere date. *Non constat* there may be other letters of the same date, and it should be marked with an exhibit number. I suggest that it be marked Exhibit A of this date.

The copy of the letter is marked "Exhibit A, for identification, November 7, 1901," the original to be correspondingly marked when produced.

Q. Have you a copy of the next preceding letter written by you to Mr. James A. Pell, prior to March 15, 1901?

A. Yes.

Q. Will you produce it?

(Witness does so.)

Q. Can you state the date of the next previous letter——

Mr. MACFARLAND: If the witness is to be examined upon that letter I want that marked as an exhibit.

Mr. ELY: Certainly. I am not asking about the letter at present. I am asking for a date.

A. This is the letter, August 28, 1900. It is a copy of it.

Q. Have you produced a copy of a letter that you wrote to Mr. Pell on August 28, 1900?

A. I have.

123 Q. Is this a correct copy of that letter?

A. Yes.

Mr. ELY: I offer that in evidence.

It is received in evidence and marked "Defendant's Exhibit No. 1, C. P. Y."

The following is a copy:

"PROVIDENCE, R. I., *August* 28, 1900.

John A. Pell, Esq., Court Lodge, Horton Kirby, near Dartford, Kent, England.

DEAR SIR: An earlier reply would have been made to your letter of July 24th had it not been that since its receipt I have been frequently absent from the office.

Since writing you on July 13th, the plan for separating the Castner plant and patents from the rest of the company has been materially advanced, the bonds of the new company having been brought out and underwritten in England. The arrangement provides, as stated in my letter of July 13th, that the Mathieson Alkali Works shall, in exchange for the present plant and patents, take all of the common stock of the new company. The funds derived from the sale of the new company's bonds are to be applied for the building of additional plant. The Mathieson Alkali Works will then, by virtue of owning the stock, receive all the earnings of the

124 new company after the payment of the interest and sinking fund on the bonds of the company. This we believe will work out highly to the advantage of the Mathieson Company.

As regards the issue of further amounts of stock of the Mathieson Alkali Works, the plan has been somewhat altered since the call was sent for the meeting to be held at Saltville June 19th. The issue of stock now being arranged is set forth in the notice sent you last Saturday for the annual meeting to be held at Saltville, September 6th. Without seeking to make a full explanation of all the details of the plan we may say briefly that the new issue of stock is intended to provide for the liquidation of all the present indebtedness of the company and to still preserve a standing for its common stock. The plan has the assent of a great majority of both stockholders and creditors. With funds obtained from a sale of part of the new stock to be issued it is intended to secure the physical reorganization of the property at Saltville putting it in such condition as to enable it to make substantial and satisfactory earnings.

We are not certain that this letter conveys such information as you may desire but we have sought to state briefly the matter as it now stands so that you may know about what is being done.

We remain, very respectfully,

JOHN RUSSELL GLADDING, *Treasurer*."

125 Q. Was the letter from Mr. Pell, dated March 5, which you have referred to in your letter of March 15, marked "Exhibit A," in reply to this letter marked "Defendant's Exhibit No. 1"?

A. That is next in order in the correspondence.

Mr. ELY: I offer in evidence the duly acknowledged and executed conveyance from the Mathieson Alkali Works to the Castner Electrolytic Alkali Company, of the property at Niagara Falls, including plant, patents, trade-marks etc., bearing date December 31, 1900, executed by the Mathieson Alkali Works and the Castner Electrolytic Alkali Company, with the seals of the respective companies attached, and duly recorded in the office of the clerk of Niagara county on February 15, 1901, and ask that that be marked in evidence.

It is received in evidence and marked "Defendant's Exhibit No. 2, C. P. Y."

Q. Whenever you have used the words "owning stock in the Castner Company" you meant capital stock, did you not?

A. Yes, sir, of course.

Q. And you meant that the Mathieson Alkali Works is a stockholder of the Castner Electrolytic Alkali Company, in the sense of holding capital stock?

A. Yes, sir.

126 Cross-examination by Mr. MACFARLAND:

Q. In what county of Virginia is Saltville?

A. It is in two counties, Smyth and Washington. Chiefly in Smyth.

Q. You mean it owns property in two counties?

A. Yes.

Q. What other county?

A. Washington.

Q. In what county is Saltville situated?

A. Certainly in Smyth. I think a part of it is in Washington also.

Q. What sort of a place is Saltville? How large is it?

A. Oh, there are probably a thousand or fifteen hundred people in the valley.

Q. In the village?

A. Yes, sir.

Q. Do you mean to say that that village is partly situated in two counties?

A. I think so. I am not positive of that.

Q. The village?

A. I think so, yes, sir. I think so.

Q. What makes you think the village is situated in two counties?

A. It has been my impression that the county line ran at one end of the village, across the village. I do not make that as a positive statement. You asked me my impression.

Q. Where is your factory? In the village?

A. Not literally in the village. It is in the town of Saltville.

127 Q. How far from the village?
A. It is on the edge of the village.
Q. How many people do you employ there?
A. About four or five hundred.
Q. They live about the works?
A. Yes, sir.
Q. And in the village?
A. Yes, sir, in the village and around about.
Q. How do you get to Saltville?
The WITNESS: From New York?
Mr. MACFARLAND: Yes.
A. By way of Washington and Lynchburg. It is on the line of the Norfolk & Western railroad.
Q. Is it true that the alkali works owns the entire village of Saltville?
A. Yes.
Q. Did it build it?
A. Largely. Not altogether.
Q. When were the alkali works established there?
A. I think building began about 1893.
Q. Whom did it buy the property from?

Mr. ELY: I object to that as being immaterial. We are not considering the sources of the property. The object for our consideration is whether we were doing business in New York in 1891.
The MASTER: I will allow the question and give an exception.
Exception by Mr. Ely.

128 A. I don't know.
Q. You do not know?
A. I do not know.
Q. You never heard?
A. I never have known.
Q. Do you mean to swear you do not know?
A. I do.
Q. Have you any idea?
A. I have an impression, certainly.
Q. What?
A. Yes, sir, I have an impression, but I do not know.
Q. What is your impression?

Mr. ELY: I object.
The MASTER: Let him state his best knowledge.

A. I think it was bought from one George W. Palmer.
Q. Was it not bought from R. T. Wilson?
A. Not that I have any knowledge of. I never heard that it was.
Q. What do you do at Saltville besides make alkali?
A. Make salt.
Q. Anything else?
A. Nothing else.
Q. What books do you keep there?

A. Keep the manufacturing books.
Q. Any others?
A. I think that answer would cover the intention of your question, as I understand it. I think that answer is broad enough.
Q. I ask you what books you keep there?
The WITNESS: Do you wish me to define every book that
129 is kept there? I do not understand what it is counsel wants.
Q. Do you keep any other books there?
The WITNESS: As for example what?
Mr. MACFARLAND: Answer the question.
A. I don't know what is intended.
Q. You do not know what books are? Business books?
A. Yes, sir, certainly they are.
Q. Then what business books do you keep at Saltville?

Mr. ELY: I object.

A. We keep the books relating to the manufacturing of the company.
Q. Is that all?
A. That is all.
Q. What becomes of the product that is manufactured there?
A. It is sold.
Q. Where?
A. All over the country.
Q. Including New York?
A. Yes, sir.
Q. Who handles it here?
A. Nobody handles it here. Do you mean who uses it?
Q. Who sells it here?
A. Nobody sells it here. We have no agents in the city of New York.

Mr. ELY: I must renew my objection, your honor. We are here for the purpose of determining the question whether we were doing business in the city of New York on a particular date.
130 The MASTER: Go on. There is no question unanswered.

Q. You do not sell anything here in this city?
The WITNESS: Do you mean, do we sell——
Q. Just answer my question, no matter what I mean. Do you sell anything here in the city?
A. I can't answer a question until I know what it means.
Mr. MACFARLAND: I repeat the question.
The MASTER: He has already stated he sold all over the country, including New York.
Q. What relation has Arnold, Hoffman & Company to your concern?
A. They are the selling agents.
Q. Where is their place of business?
A. They have offices in several cities. Their head office is in Providence.

Q. Have they an office here?
A. Yes, sir.
Q. Why did you not mention that? Do they sell your products here?
A. I suppose so. I don't know.
Q. Do you not know?
A. I don't know.
Q. Have you got any contract with them?
A. We have an arrangement with them.
Q. Have you got any contract with them?
A. I shall have to ask you the meaning of a contract.
Q. Have you got any contract with them? You do not know what I mean by a contract?
A. I do not, in this case.
131 Q. What is an arrangement?
A. The arrangement is that Arnold, Hoffman & Company sell the goods and are paid a commission for selling them.
Q. But there is no contract about it?
A. Well, I am not sufficiently versed in the law to answer whether it is a contract signed and sealed or not.
Q. When did Arnold, Hoffman & Company commence doing that?
A. A good many years ago. I don't know how long.
Q. Do they continue so still?
A. Yes, sir.
Q. Did they receive the Niagara product also?
A. Yes, sir.
Q. And do they still?
A. Yes, sir.
Q. Do the same people manage the Niagara plant that did before the Castner Company was formed?
A. No.
Q. What changes have taken place?
A. It has gone into the hands of the Castner Company.
Mr. MacFarland: I do not ask you about whose hands it has gone into.
The Witness: It is managed by the Castner Company. It was formerly managed by the Mathieson Company.
Q. The question was, whether the same people at Niagara manage the company now that did before the deed to the Castner Company?
A. Yes, sir.
132 Q. What do you do in Providence?
A. My business is for the Mathieson Alkali Works. I am an employé of the Mathieson Alkali Works.
Q. What else do you do?
A. Nothing.
Q. You have no other occupation?
A. No.
Q. What do you do there for the Alkali Works?

A. I look after its books and its finances. I attend to its books and finances.

Q. What books do you attend to?

A. The usual books that are kept by corporations.

Q. What are they?

A. The cash book and ledger. The journal.

Q. What else?

A. There is a sales book.

Q. In whose office is your office? In the office of Edward E. Arnold?

A. My office is in the office of the Mathieson Alkali Works.

Q. Has Mr. Edward E. Arnold got an office there, too?

A. Mr. Arnold is also an officer of the Mathieson Alkali Works.

Q. Has he got an individual personal office there?

A. No.

Q. What is his business?

A. He is the officer of this company, as I am.

Q. What else does he do?

A. He is also an officer of Arnold, Hoffman & Company.

133 Q. What else does he do?

A. Nothing. He has no other business.

Q. Except to be an officer of these two companies?

A. Yes, sir.

Q. And he is the Arnold of Arnold, Hoffman & Company, is he not?

A. Yes, sir.

Q. You sell some of the product of these concerns in Providence?

A. Yes, sir.

Q. Do you make the sales personally?

A. By that do you mean — Arnold, Hoffman & Company sell them all. We sell them to Arnold, Hoffman & Company and they sell them.

Q. So they are all sold through Arnold, Hoffman & Company?

A. Arnold, Hoffman & Company. That is, the great body of them. The caustic and bleaching powder and ash are sold through Arnold, Hoffman & Company. The salt is not.

Q. What does your ledger contain, in Providence?

A. It contains the manufacturing accounts of the company, and the personal accounts of the company.

Q. Are all the accounts of the company kept in Providence?

A. Yes, sir. That is to say——

Mr. MacFarland: Think, now.

The Witness: Yes, sir. I have told you already that some of the accounts are kept in Saltville, but they are reported to

134 Providence. Providence is the head office.

Q. No accounts are kept here, are they?

A. No.

Q. None at all?

A. None at all.

Q. No books kept here?

A. None whatever. None at all.
Q. Never were?
A. Never were. That is, for the last six or seven years.
Q. Where is the stock book of the company kept?
A. In Providence.
Q. Is it there now?

The WITNESS: Do I answer all these questions?
Mr. ELY: I have no objection to your telling.

A. Yes.
Q. Why do you ask permission to answer that question? Have you some doubt about it?
A. No, I didn't know whether I was obliged to answer all these questions.
Q. Where are the directors' minute books of this corporation kept?
A. In Providence.
Q. Were they ever kept anywhere else?
A. Not since I have had anything to do with the company.
Q. Were they ever taken anywhere else—those books?
A. They may have been in an individual instance.
Q. There may have been individual instances?

Mr. ELY: I must object to this question and to this line of
135 examination as wholly immaterial, irrelevant and impertinent to the issue.

The MASTER: I cannot tell at this stage the extent to which this is relevant. Some of it apparently may be relevant and some of it apparently may not be, but until this line of examination is in my judgment carried to an extreme I shall let Mr. MacFarland conduct it on these lines until further developments. You can except once for all to this ruling.

Mr. ELY: I make the exception, covering the whole line.

Q. Where are the meetings of the directors of this corporation held?
A. They have been held at various places at different times.
Q. At what various places?
A. In Providence, in Saltville; sometimes in New York.
Q. We will take Saltville first. When was the first directors' meeting held there?
A. I don't know.
Q. How many directors' meetings have been held in Saltville?
A. I don't know.
Q. When was the last meeting held there?
A. I can't remember.
Q. You do not even know that?
A. I can't remember.
Q. And you are secretary of the company?
A. Yes.
136 Q. Have you been notified to produce the minutes of the directors' meetings?

A. I have not.
Q. Have you been notified not to produce them?
A. I have not.
Q. Will you produce them?

The WITNESS: Do you mean now or when?
Mr. MACFARLAND: At the next hearing. Are they here?
The WITNESS: They are not here.

Q. They are in Providence?
A. Yes, sir.
Q. Will you produce them at the next hearing?
A. I would have to do that under the direction of my board of directors.
Q. You will not answer?

Mr. ELY: You have had your answer.

Q. When was the first directors' meeting held in Providence?
A. I don't know.
Q. How many have been held there?
A. I don't know.
Q. Will you swear that one was ever held at Saltville?
A. Yes, sir.
Q. In what year?
A. I don't remember the year.
Q. Will you swear that two have ever been held there?
A. I can't swear as to two. I remember one.
Q. And you do not even know the year?
A. I don't know.
Q. Can't you get within four or five years of it?
137 A. Yes, sir.
Q. What year do you think it was in?
A. Oh, I should think about four years ago.
Q. When was your last directors' meeting in Providence?
A. I don't remember that.
Q. You do not remember that?
A. No.
Q. Have your directors' meetings all been held in New York, with the exception of those that you can remember of in Saltville and Providence?
A. I don't know, because much of the history of the company is not of my personal knowledge at all.
Q. You are keeper of the directors' meetings, are you not?
A. Yes, sir, but I don't always read them for years, before I became an officer.
Q. Since you became an officer have not the directors' meetings been held in this city?
A. Have there been directors' meetings held in this city? Yes, sir.
Q. Have they not all been held here?
A. No.
Q. What directors' meetings have been held elsewhere?

A. I referred to one, in Saltville.

Q. With the exception of the one in Saltville, have they all been held here?

A. I am not sure.

Q. Do you know of any that have been anywhere else, that you can tell us about?

A. I think there have been one or two held in Providence.

138 I will not make that as an assertion.

Q. But you want to be certain?

A. I won't be certain.

Q. And you can't tell when?

A. No.

Q. When was the last directors' meeting held here?

A. It was held in October.

Q. In the present year, October?

A. Yes, sir.

Q. Where?

Mr. ELY: I object to that as since the period covered by the examination.

The MASTER: I will allow it and give an exception.

Exception by Mr. Ely.

Mr. ELY: I object to any examination which is subsequent to the date at issue in this reference, April 18.

Mr. MACFARLAND: Go on, sir.

The WITNESS: Where shall I go on?

Q. Where was that meeting held?

A. At the office of R. T. Wilson.

Q. In this city?

A. Yes, sir.

Q. Mr. R. T. Wilson is one of the directors, is he not?

A. Yes, sir.

Q. All the meetings that have been held in New York have been held at his office, have they not?

A. No.

139 Q. Where else have they been held?

A. They have been also held in the office of Arnold, Hoffman & Company.

Q. How many have been held there?

A. I can't say how many.

Q. When?

The WITNESS: When have they been held?

Mr. MACFARLAND: Yes.

A. At various periods.

Q. At Arnold, Hoffman & Company's?

A. Yes, sir.

Q. But how many times or when you cannot tell?

A. I cannot.

Q. Who is president of the Alkali Company now?

Mr. ELY: I object to that, as the scope of this inquiry does not cover the affairs of the Alkali Company since April 18, 1900.

The MASTER: I will allow it.
Exception by Mr. Ely.

A. Mr. Edwards.
Q. What is his first name?
A. James.
Q. What is his occupation?
A. He is the president of the Mathieson Alkali Works.
Q. What else?
A. He is also the president of the Castner Electrolytic Alkali Company.
Q. What else?
A. I don't know what else.
Q. Do you mean to seriously tell us you do not know?
140 A. I do.
Q. You swear you do not know?
A. I have already sworn once.
Q. What relation does he sustain to R. T. Wilson?
A. I don't know.
Q. Do you know whether he sustains any?
A. I do not.
Q. His office is in R. T. Wilson's office, is it not?
A. Yes, sir.
Q. And the office of the alkali works is in R. T. Wilson's office, is it not?
A. It has no office here.
Q. Has it any sign up here—the Mathieson Alkali Works?
A. Not to my knowledge.

Mr. MACFARLAND: I offer in evidence a notice to produce, with proof of service.
It is received in evidence and marked "Plaintiff's Exhibit No. 1."
Mr. MACFARLAND: I call upon counsel for the defendant, The Mathieson Alkali Works, to produce the minute book of the company.
The MASTER: Do you produce it or do you not produce it?
Mr. ELY: I do not produce it.
Mr. MACFARLAND: I call, in like manner, for the production of the stock book of the company.
The MASTER: Do you produce that?
141 Mr. ELY: I do not.
Mr. MACFARLAND: I call for the production of the by-laws of the company?
The MASTER: How about the by-laws? Do you produce those?
Mr. ELY: I do not.
Mr. MACFARLAND: I call for the production of the existing contracts between the Castner Electrolytic Company and the Mathieson Alkali Company?
The MASTER: Do you produce them?
Mr. ELY: I do not produce any.

Q. Look at the book I hand you and see if it is a copy of the by-laws of the company?

A. It appears to be.

Mr. MacFarland: I offer in evidence a by-law of the company, adopted June 25, 1896, which is in the following words:

"The directors, in addition to any other meetings that may be held, shall hold regular monthly meetings at the office of the company in the city of New York, at 12 o'clock noon, on the second Wednesday of each and every month in each year.

"Special meetings of the board may be called at any time by the president when deemed necessary and shall be called by the president or secretary at any time upon the written request of any
142 three directors.

"At all meetings a majority of the board shall constitute a quorum for the transaction of business."

Q. Have you heard that by-law read?

A. I heard you reading something or other.

Q. Do you know what it is? Do you want to look at it?

A. I see what is there.

Q. Is there anything fragmentary about it?

A. I don't know as to that.

Q. See if you see anything fragmentary about it. Do you discover anything?

A. It appears to be fragmentary.

Q. In what way?

A. It says that articles are amended so as to read as follows. I don't know whether that constitutes the whole or not.

Q. A by-law is fragmentary when it is a by-law: is that it?

A. That is only a part of the article. It certainly is not the whole by-law.

Q. What is it a part of? Let us have the whole of it?

A. The main paragraph or main article of the by-law is amended as to the last paragraph. It states very clearly what it is.

Q. What is necessary to complete that fragmentary thing?

A. I suppose you would have to read the whole article in
143 regard to the duties of the directors. That is my suggestion, that if you wish to give the article about the board of directors in its entirety you should read first the several paragraphs here and then the last connection.

Q. The last one will do very well by itself. It is plain enough?

A. I suppose it is clear in itself.

Q. Has it been obeyed?

A. No, I think not. Not literally.

Q. Has it been disregarded?

A. Not altogether.

Q. In what way has it been disregarded?

A. Notices no doubt have been sent in accordance with the by-laws but the directors have not always assembled.

Q. What you mean to say is that the meetings have been called according to these by-laws?

A. They have been called either according to that or according to some later amendments.

Q. Where is the later amendment?
A. I haven't them here.
Q. Do you know that there are any?
A. I think there are some resolutions affecting that, at least.
Q. Where are they?
A. I can't tell you offhand where they are.
Q. Why do you talk about them if you *think* about them?
A. You asked me about whether this had been followed and I told you why.

144 Q. I ask you now whether it has been followed and I want you to answer?
A. I don't think it has, in literal terms.
Q. In what respect?
A. I think the dates have been changed.
Q. I ask you if this by-law has been kept or if it has been violated?
A. I don't think it has been kept and I don't think it has been violated, because I think it has been superseded, or some part of it at least.
Q. Then it has been kept? I ask you if these meetings have been called monthly, according to these by-laws?
A. I think they have been called in accordance with that by-law.
Q. I ask you if the meetings have been called monthly?

Mr. ELY: I object. He has answered the question. He says they are not.

The MASTER: The witness seems to have answered the question. As I understand it he says it is his impression that the by-laws have been changed so as to call for a different date, and the meetings have been called in accordance with that by-law. The answer seems responsive.

Q. When was any change made in this by-law?
145 A. I can't tell you.
Q. What change was made?
A. I can't tell you that.
Q. Where was it made?
The WITNESS: What do you mean? Where was the vote taken making it?
Mr. MACFARLAND: Where was the change made?
The WITNESS: Do you mean where, in the book?
Mr. MACFARLAND: No, in what place? In what office?
A. I don't know.
Q. You do not know?
A. I do not.
Q. Or what the terms of the change were?
A. No.
Q. And you say this by-law has been disregarded?
A. I do not say that. I said it was my impression that it had not been followed.
Q. In what respect?
A. Have I not answered that?

The MASTER: Yes, but answer the question again.

Q. In what respect was it not followed?

Mr. ELY: I object.

A. It has been followed only in this respect—that if there are subsequent amendments to the by-laws and resolutions of the board of directors altering its terms, they have been followed after that date?

Q. But you do not know of any subsequent resolution?

146 A. I have not the whole record of the company in my head so that I can give you the date and page.

Q. That does not answer my question yet.

A. You will have to restate it then.

Q. In what respect has this by-law which I read to you not been followed?

A. I can't tell you.

Q. Has it been generally followed?

A. I cannot say that. I think my previous answer would answer that.

Q. Have monthly meetings been held here?

A. No.

Q. How often have meetings been held here?

A. They have been held occasionally.

Q. About how often?

A. Oh, I don't know. Perhaps once in two or three months.

Q. The last one was held in October?

A. Yes, sir.

Q. When was the one before that held?

A. I am not certain. I should think it was in May or June.

Q. And the one before that?

A. I don't remember.

Q. Do you attend all the directors' meetings?

A. I generally have. Not all of them.

Q. Do you attend all of them?

A. No.

Q. Who acts as secretary when you do not attend?

A. The secretary is elected at the meeting, in such cases—in my absence.

Mr. MACFARLAND: I give you notice, as secretary, at the

147 next meeting to produce the minutes of the directors of this corporation, with any of your supposed additions to the by-laws if there are any.

At 4 o'clock p. m. adjourned to Friday, November 8, 1901, at 11 o'clock a. m.

Last exhibit: Plaintiff's No. 1.
Defendant's No. 2.

148 CONLEY
vs.
THE MATHIESON ALKALI WORKS.

NEW YORK, *November* 8, 1901—11 o'clock a. m.

Present: The master. Mr. MacFarland for the plaintiff. Mr. Agar and Mr. Ely for the defendant.

JOHN RUSSELL GLADDING, being recalled and further examined, testified as follows:

Cross-examination continued by Mr. MACFARLAND:

Q. Were you the first secretary of the Mathieson Alkali Company?
A. No.
Q. Who was the first secretary?
A. I don't know.
Q. When did you become secretary?
A. In 1895, I think.
Q. Do you know or do you think?
A. I think.
Q. You do not know?
A. I could not make the absolute assertion without referring to the record.
Q. Where are your records?
A. They are in Providence.
Q. What was your business before you became secretary of the Alkali Company?

149 Mr. ELY: I object to this as wholly immaterial. This is not cross-examination.
Mr. MACFARLAND: The witness declines to answer?
Objection overruled. Exception by Mr. Ely.

Mr. MACFARLAND: Will Mr. Gladding answer or decline to answer that question?
A. I do not see that there is any object in answering the question.

Mr. ELY: There is no objection to answering it if you want to.

A. (continued). I had previously been engaged in the coal business.
Q. In whose service?

Mr. ELY: I object.
The MASTER: Let him answer.
Exception by Mr. Ely.

A. In the service of a coal company.
Mr. MACFARLAND: I think you said yesterday that you had not attended all the directors' meetings in New York?
The WITNESS: I think I did say so.
Q. It is true that you have not, is it not?
A. It is.
Q. Have you attended most of them?
150 A. If by *most* you mean a majority, yes, sir.

By Mr. ELY:

Q. Since you were secretary?
A. Yes, sir.

By Mr. MACFARLAND:

Q. Are you in the habit of visiting New York on the business of the company, frequently?
A. No.
Q. About how many times a year?
A. Why, rarely, except for the attendance upon the directors' meetings.
Q. Will you tell us, please, what business the Mathieson Alkali Company carries on in Rhode Island?
A. It carries on the affairs of the Mathieson Alkali Works. It conducts the general office of the Mathieson Alkali Works.
Q. It conducts a general office? Does it do anything else but conduct a general office?
A. The Mathieson Alkali Works does not, no.
Q. Who conducts that general office?
A. Mr. Arnold, as the president of the company; and myself, as treasurer.
Q. What does he do there?
A. He attends to the affairs of the Mathieson Alkali Works.
Q. What affairs?
A. Its general affairs.
Q. What general affairs?
A. Such as appertain to the president of a company.
151 Q. What does appertain to the president of the company?
A. The general conduct of the company's affairs.
Q. Exactly. Be a little more definite. What does he do?
A. He has the general supervision of its affairs.
Q. Its affairs where? In Rhode Island?
A. Its affairs everywhere.
Q. What does he supervise in Rdode Island?
A. He supervises the conduct of its business, in general terms. All of its business. Whatever business it has.
Q. What business has it in Rhode Island?
A. It has the business which belongs to the head office of a company.

Mr. ELY: I object.

Q. What you mean is that Mr. Arnold lives in Providence?
A. Yes, sir.
Q. And he has a business concern here?
A. No, I do not.
Q. He has no business here, has he?

The WITNESS: Are you speaking of Mr. Arnold as president of the Mathieson Alkali Works?
Mr. MACFARLAND: No. Forget for a minute, if you please, that he is president of the alkali works.

The WITNESS: Then what do you wish me to answer? What is your question?

Q. Has Mr. Arnold any business in New York?

A. Mr. Arnold is president of the—is an officer of Arnold,
152 Hoffman & Company.

Q. Has he any business in New York?

A. Arnold, Hoffman & Company has business.

Q. Why do you evade my question?

A. I am answering your question, as I understand it.

Q. Why do you evade my questions instead of answering them?

A. If you will put your questions plain enough I can answer.

Q. I ask you if Mr. E. E. Arnold has business in New York?

Mr. ELY: I object to this as unseemly and unnecessary.

Q. I repeat the question, has Mr. Edward E. Arnold any business in this city?

A. I have already answered the question.

Q. Answer it again, then.

A. I have no other answer to make than I have already given.

Q. Do you refuse to answer?

A. Other than what I have already said.

Q. You refuse to say what business he has except as president of the Alkali Company?

A. I have already given an answer.

Q. Do you refuse to give any other answer?

A. I have no other answer to give.

Q. Is he a member of the concern of Arnold, Hoffman
153 & Company?

A. Yes, sir.

Q. Is he the head of it?

A. Yes.

Q. What is the business of that concern?

A. They are dealers in chemicals.

Q. And it disposes of the product of the Alkali Company, does it not?

A. Yes.

Q. And you do not consider that as having any business here, do you?

A. I have answered the question as to Mr. Arnold already.

Q. You do not consider that he has any business here?

A. I have answered your question already.

Q. Does he spend any time here?

A. He is here occasionally.

Q. Very seldom?

A. Oh, occasionally.

Q. Very seldom.

A. I would not say very seldom, or very frequently. Occasionally. Occasionally I think is a fair definition.

Q. What do you mean by occasionally?

A. Once a month or two months.

Q. Is he here only once in two months?
A. I can't say. It may be oftener. It may be less often.
Q. So you do not know?
A. I don't know.
Q. Perhaps you can tell us what he does in Providence for the Alkali Company?
A. I have answered that question.
154 Q. Do you decline to give any further answer?
A. I see no need of any further answer. I see no occasion for any further answer.
Q. And because you see no occasion you decline to answer? Is that it?
A. If you choose to put it that way.
Q. Will you swear that he ever did anything concerning the business of the Alkali Company in Providence?
A. Why, I have answered that question already. Yes.
Q. What did he ever do?
A. He has had charge of the company's affairs for years.
Q. And it has not any affairs in Providence?

Mr. ELY: He has already testified that Mr. Arnold is the executive head of the Mathieson Alkali Works, and its chief office is in Providence.

The MASTER: Go on.

Q. Does the Mathieson Alkali Works pay you a salary?
A. It does, yes, sir.
Q. How much?
A. $3,000.
Q. You are very familiar with all the affairs of the Alkali Company, are you not?
A. I have a general knowledge of them.
Q. Did you not say yesterday that you were familiar with them?
A. Very likely I may have said so.
Q. Do you repeat it?
A. Yes, sir.
155 Q. What do you know about them? What single thing do you know about the Alkali Company?
A. I know it has a plant at Saltville, Virginia.
Q. Oh, you know it has a plant? Were you ever at Niagara Falls?
A. Yes, sir.
Q. At the plant there?
A. Yes.
Q. How many times?
A. I can't say.
Q. Have you no idea?
A. Oh, a number of times. I don't know how many.
Q. Can you tell what years you were there?
A. I was there in the year 1900.
Q. What were you there for? Looking after the business of the company?

A. Yes.
Q. What were you doing there?
A. Well, I was looking after the general affairs of the company, its finances and so on.
Q. What finances has it at Niagara Falls?
A. Merely that it incurs bills there, and pays the help.

By Mr. ELY:

Q. You mean in 1900?
A. 1900.

By Mr. MACFARLAND:

Q. Does the Alkali Company have a bank account in Rhode Island?
A. Yes.
Q. Where?
A. In Providence.

Mr. ELY: I object to this kind of examination.
156 The MASTER: I do not see how that is material, or possibly may be. I can see how a great many of the questions you have been asking may be material as to the issue on the business done in New York, but the fact that it——
Mr. MACFARLAND: If we do not land in the city of New York my examination is good for nothing.

Q. Has the Mathieson Alkali Company any bank account in New York?
A. It has not.
Q. How do you know it has not?
A. Presumably I should know if it had.

By Mr. ELY:

Q. You do know?
A. I know because I was the treasurer of the company.
Mr. MACFARLAND: Are you treasurer now?
The WITNESS: I am the assistant treasurer today.

By Mr. MACFARLAND:

Q. Who is treasurer?
A. There is no treasurer.
Q. Why do you say you are assistant treasurer?
A. I was elected to that office under that title.
Q. Then it has no treasurer?
A. It has no treasurer.
Q. Who is its financial agent here?
A. It has none.
Q. Has it any account with R. T. Wilson & Company?
The WITNESS: Do you mean has it a personal account with him? Yes, it has.
157 Q. The Alkali Company has an account with R. T. Wilson & Company?

A. It has had, at times.
Q. Has it now?
A. Yes, it has, in a sense.
Q. Then why do you say it has had at times? Did you mean or want us to think that it had not now, when you said that?
A. No; but I mean that the account is not now of the same character that it was.
Q. Have I asked you about the character of the account? Did I ask you about that?
A. I don't know. I don't think you did. I was volunteering then.
Q. Then why do you volunteer?

Mr. ELY: Do not answer that question at all.

Q. What was the character of the account?

Mr. ELY: I object, unless he limits it to some time, as being not cross-examination.
Mr. MACFARLAND: I think we are in New York now.
Mr. ELY: When? Give your time.
Mr. MACFARLAND: I will come to that soon enough. I want now to find out the relations of this company to R. T. Wilson & Company.
Mr. ELY: When?
Mr. MACFARLAND: Since the company was organized, all the way down.

Mr. ELY: That has nothing to do with this proposition.
158 I object.
The MASTER: I will allow it.
The WITNESS: When?

Q. From the time of the organization of the company down to the present time?
A. I can't answer that question because I don't know.
Q. Do you know what it was the first year of the company?
A. I do not, no.
Q. The second?
A. No.
Q. The third?
A. No.
Q. Do you know any year?
A. Yes.
Q. Do you know anything about the account?
A. Yes.
Q. When does your knowledge of it begin?
A. It begins with the time when I became an officer of the company.
Q. When was that?
A. About five years ago.
Q. We will take then your first year. What was the nature of the account with R. T. Wilson & Company then, five years ago?

A. My recollection is that at that time he loaned money to the company.

Q. Kept an account with the company—debit and credit account?

A. The company borrowed money from R. T. Wilson & Company.

Q. R. T. Wilson & Company had a running account with the company, did it not?

A. As lenders of money only.

159 Q. Did it have a running account with the company?

A. I have answered that question.

Mr. ELY: I object. He has already answered the question.

The MASTER: That is responsive; go on.

Q. Did the company ever deposit any money with R. T. Wilson & Company?

A. None to my knowledge.

Q. Do you know whether it did or not?

A. It has not within my knowledge.

Q. Do you know whether it did or not?

A. I don't know whether it ever did, because I have no knowledge of the company prior to my connection with it.

Q. Did it since your connection with it?

A. It has not.

Q. Does the company receive money from its selling agent?

A. Yes.

Q. What does it do with it?

A. It pays its bills.

Q. On what bank does it draw checks to pay bills with?

Mr. ELY: I object to that question.

A. On a bank in Providence.

Q. On no other?

A. On no other, except one in Virginia.

Q. It has no bank account here?

A. It has not.

Q. Has it ever drawn any money from R. T. Wilson &

160 Company?

A. I have answered that question already. I have said that R. T. Wilson & Company loaned the company money.

Q. The company then has financial transactions with R. T. Wilson & Company?

A. It has had, yes, sir, and does have.

Q. What do you mean when you say that the Mathieson Alkali Company has no property in this State?

A. I meant what I said—that it had no property in this State.

Q. What do you mean by property?

A. I can't undertake to define the word property to you. It has no property in this State.

Q. How do you know it has not?

A. I know it because I am an officer of the company, and if it had I should know it.

Q. You say that the Niagara plant was sold to the Castner Company?
A. Yes, sir.
Q. And you say it was a matter of long negotiation?
A. Yes.
Q. Between whom?
A. Between the Castner Company and the proposing——
Q. No, I do not want any abstractions. I want human beings. Will you tell us that, please? Between what human beings did this negotiation take place?
A. It took place between members of the board of the
161 Mathieson Alkali Works——
Q. Give us the names? Human beings.
A. By the members of the board of the Mathieson Alkali Works.

Mr. MacFarland: No, give us the names.
The Witness: Do you wish the names of the members of the board?
Mr. MacFarland: Yes.
The Witness: Mr. Wilson and Mr. Arnold and Mr. Hooper; Mr. Sayles, Mr. Agar, Mr. Ely, the second Mr. Sayles and myself. There is an F. C. Sayles and F. A. Sayles.

By Mr. Ely:

Q. Also people in London?
A. Yes, sir.

By Mr. MacFarland:

Q. Those people represented the Alkali Company, did they not?
A. They represented the Alkali Company.
Q. When you are negotiating there have to be two parties?
A. That is true, yes, sir.
Q. Who were the other people?
A. The other people were chiefly in England.
Q. What were their names?
A. Mr. Hawes and Mr. Smith. And Mr. Mather.
Q. Those three people?
A. Those three people. Yes.
Q. Anybody else?
A. There were others. I do not recall the names of them.
162 Q. Where did the negotiations take place?
A. Both in England and America.
Q. What relation did these Englishmen sustain to the business?
A. They were proposing investors in the company—in the Castner Company.
Q. Proposing investors in what?
A. In the Castner Company.
Q. Then they negotiated as proposing investors? Is that it?
A. Yes, sir.
Q. Were you present at these negotiations.
A. At some of them.

Q. Which ones?

A. Many of them.

Q. Let us be a little more precise now. We will take them up in their order. Which negotiations were you present at first?

A. I can't give you the dates because there were many of them.

Q. We will take up now the first negotiation at which you were present. What year did it occur in?

A. I think it was in the year 1900.

Q. And where did it take place?

A. I can't recall the first. It may have been in 1899. I am not sure.

Q. Where did it take place?

A. I can't say whether it took place in London or New York or Providence.

A. But you were present?

The WITNESS: While I was present?

163 Q. You were present, were you not? You said that just now.

A. I didn't say I was present at the first negotiation. I won't say whether I was or not.

Q. You were not present?

A. When? What is your question? Will you restate it?

Q. I commenced by asking you something about this negotiation that you were so free to talk about yesterday and you said you knew all about it, did you not? Now, I am going to find out how much you know about that. Do you see now? Now, I ask you when you were present at the first negotiation? Do you understand that question?

A. I did not understand your question, no.

Mr. ELY: I ask why this is material or pertinent. The fact of a sale is in evidence.

Mr. MACFARLAND: Let us have that first negotiation. Is there an objection?

Mr. ELY: There certainly is. I object to this, in the first place, as not being cross-examination, as not being pertinent to the issue and as having no relation whatever to the fact of whether this company was doing business at the time we are called upon to investigate under this order.

The MASTER: It seems to me as far as this branch of it goes, however doubtful the materiality of some of the rest of the ques-
164 tions, that this is entirely material, in view of your direct examination of yesterday. You put in the correspondence, in which it was undertaken to be shown, as I understood it, that this letter which is to be explained under the order of reference was the result of the negotiations that had been carried on for some time. I think it is quite proper, on cross-examination, to go into that.

Exception by Mr. Ely.

The WITNESS: Does he not put the question in an obscure way?

By the MASTER:

Q. Do you understand the question?
A. I do not understand the question, unless he repeats it?

By Mr. MACFARLAND:

Q. I will repeat it in a perfectly unambiguous way. At what negotiation were you ever present? Mention the time and place and who was there. Do you understand that?
A. Yes. I was present at a negotiation in London in the year 1900.
Q. At what time?
A. In the earlier part of the year.
Q. Can you get nearer than that?
A. Yes. I should say in March.
Q. Where did it take place?
A. In London.
165 Q. Whereabouts? London is a big town?
A. I think the address is Cannon street, as I remember it. Somewhere on Cannon street.
Q. Somewhere in Cannon street?
A. I can't remember the number.
Q. Whose place was it?
A. At the office of Mr. Hawes.
Q. Who else was there?
A. Mr. Hawes and myself were there at that time.
Q. Anybody else?
A. No, not at the beginning.
Q. Then at that negotiation you two were present?
A. Yes, sir.
Q. And you two negotiated, did you?
A. We began, yes, sir.
Q. What did you do?
A. There was a general talk about the proposal which we had for the formation of the new company.
Q. When did you negotiate the second time?
A. As I recall, it was——
Q. This was the first time, was it not?
A. This was not the first time that the negotiation was under way. No, it was not.
Q. Do you understand that I am asking for your personal knowledge and your personal connection with the negotiations?
A. I understand that you did in that question, yes.
166 Q. Now, we will begin at the beginning. When did you first take part in any negotiations?
A. I have given you the answer.
Q. That was the first time?
A. Yes.
Q. Will you tell us the second time?

The MASTER: You mean in March, 1900? That was the first time that he came directly into it.

By Mr. ELY:

Q. In March, 1900?
A. Yes, sir; but the matter had been opened up before that.

By Mr. MACFARLAND:

Q. When was the next time?
A. I think the day succeeding the first day, I think I was there for some time. And there were a number of interviews.
Q. With the same people?
A. Yes.
Q. And those interviews related to the formation of a new company?
A. Yes, sir.
Q. Are you able to state with any more definiteness the times of those different interviews and who was present?
A. I can't at this date, no.
Q. This all occurred in March, 1900?
A. That was the date of the first interview there.
Q. What was the date of the second?
A. That was in March also.
Q. What was the date of the third?
167 A. I can't tell you. They continued—this is the information which you want; they continued some days in March and into April.
Q. What was the result of those negotiations?
A. They resulted in a further negotiation until this company was organized and the matter was closed and the sale of the plant at Niagara Fall was consummated.
Q. Have you told us all about your English negotiations that you think of?
A. I have told you the substance of them. Not all about it.
Q. You did not come to any agreement at that time, did you?
A. Not final.
Q. Did you ever come to any agreement?
The WITNESS: Do you mean myself personally?
Mr. MACFARLAND: I mean, was any agreement ever made with anybody?
The WITNESS: By me?
Mr. MACFARLAND: Well, yes, by you?
A. Not final.
Q. What do you mean by "not final"?
A. I mean that no final arrangement was made by me with anybody.
Q. What do you mean by final arrangement?
A. I mean the sale of the property was not concluded by me.
Q. Then you did not come to any agreements in London, did you?
A. No final agreement.
168 Q. You did not get beyond talk?
A. Well, not beyond talk of a certain character.

Q. What do you mean by a certain character?

A. I have stated, that we conducted negotiations there but they were not final in character.

Q. What do you mean by using these expressions, if you do not know what they mean?

A. It is difficult to determine by your sort of questions what you want.

Q. I ask you if your London business came to anything more than talk? Will you answer that?

A. Yes, sir, it did, finally. It resulted in the sale of the property.

Q. When did you leave London?

A. In April, 1900.

Q. You came back to this country?

A. Yes.

Q. When did you next attend any negotiations?

A. I do not recall exactly. It was some time subsequent to my return.

Q. Where?

A. Both in Providence and in New York.

Q. We will take up Providence first. When did you negotiate in Providence?

A. It was during the spring of 1900.

Q. What time?

A. I can't recall the dates.

Q. Whom did you negotiate with?

A. With a representative of Mr. Hawes.

Q. What is his name?

A. I can't recall. He was an accountant.

169 Q. And you negotiated with an accountant?

A. Yes, sir, under Mr. Hawes' direction, to a certain extent.

Q. What extent?

A. To the extent of giving him information about the plant proposed to be sold.

Q. Then there was a representative visiting you in Providence to get some information about the plant?

A. Yes, sir.

Q. And that you call a negotiation?

A. Yes, sir; that was a part of the negotiations.

Q. Did you make any agreement with him about anything?

A. As regards many of the facts in the case, yes, sir.

Q. You mean you told him some facts?

A. I did tell him some facts.

Q. And you call that an agreement?

A. I call it part of an agreement.

Q. Why do you call it part of an agreement? What did you agree about?

A. We agreed about the character of the——

Q. Well no matter. You had some talk with an accountant about a plant. That is what it comes to, does it not?

A. Yes, sir.

Q. And it does not come to anything more, does it?
A. That part does not, no.
Q. When did you negotiate next, yourself?
A. I can't give you the dates of these negotiations. They
170 ran over a considerable period.
Q. Give the place and month. Where did you negotiate next?
A. There were some conversations had in New York.
Q. Wait a minute. Take up the first one that you remember. We are negotiating the sale of a plant, are we not?
A. Yes, sir.
Q. We are talking about the sale of the Niagara plant?
A. Yes, sir.
Q. You say a sale was negotiated with somebody, do you not?
A. Yes, sir.
Q. Now, I am trying to get you to tell me, if you please, with whom it was negotiated. Do you understand that?
A. Yes, sir.
Q. You have told us about your London affair and about the accountant coming to Providence. I want you to tell us something more, because when we sell such a big thing as a plant at Niagara, certainly there must be some negotiations of a serious character. Do you not think so? Now, we will come to your next negotiation. We have got through with your accountant in Providence?
A. There was very little more that I had to do with it myself.
Q. That is all you know about it?
A. No, it is not all I know about it, but it is all I know in——
171 Q. Personally? I do not care what you have heard. Did you personally have anything else to do about it?
A. I had to do with the transaction in its later stages, yes.
Q. I am now speaking about negotiating the sale of this property. Will you kindly keep your mind on that part of it? Have you told us all that you had to do with that negotiation?
A. No, it is not all of it.
Q. Will you tell us the rest, then?
The WITNESS: That I had personally to do with it?
Mr. MACFARLAND: Yes.
A. I was present at some of the subsequent interviews.
Q. Will you tell us about those interviews? Where did they take place? Take them up in their order, beginning with the first?
A. There were a number of interviews held here——
Q. I do not want numbers. That is easy. Will you give us the first one?
The WITNESS: The date, I suppose?
Mr. MACFARLAND: Yes.
A. I can't tell you.
Q. Will you give us the month?
A. I think it was May or June.
Q. Is that as near at you can get?
A. Yes, sir.

172 Q. Where did it take place?
A. I think it took place at a hotel in this city.
Q. What hotel?
A. I think it was the Waldorf hotel.
Q. Who was present?
A. Mr. Arnold was there. This Mr. Hawes was present.
Q. This Englishman?
A. Yes, sir.
Q. Anybody else?
A. I think Mr. Ely was present on some occasions, if I recollect.
Q. Did you make any sale at that time of the Niagara plant?
A. No.
Q. What was the next negotiation?

Mr. ELY: How can this possibly be material?

A. I can't tell. The negotiations followed for some considerable period, both in New York and London.
Q. You must be a little more precise than that. Can you tell us when the next meeting took place for the purpose of arranging this sale?
A. No, I can't recall the dates following that.
Q. Do you know anything more about it than what you have told us now?
A. That is as far as my personal knowledge goes.
Q. You do not?
A. I know the facts as they transpired subsequently.
Mr. MACFARLAND: I do not want that.

The WITNESS: My personal part of making the negotia-
173 tions terminated. I think that I had nothing subsequent to do, in general terms, with the concluding of the negotiations.
Q. What do you mean by "general terms?" You seem to be fond of these peculiar expressions?
A. Well, I mean this: that I was cognizant of negotiations as they continued, but I was not a principal party in it.
Q. Do you not mean this now: that you had not a blessed thing to do with the negotiations after this meeting at the hotel?
A. No, I do not mean that.
Q. Then tell me what you did have to do with it, leaving your generalities to take care of themselves. Will you tell precisely what you did?
A. I can't do that at this time. I can't recall precisely what I did.
Q. Will you tell me in general terms what you did and where you did it and who was present when you did it?
A. I have already said in general terms that I was present at a number of subsequent interviews when Mr. Arnold and Mr. Hawes were present. At times Mr. Wilson was present.
Q. Now can you tell me in general terms whether any of those interviews resulted in an agreement to sell?
A. Yes, sir, they did.
Q. Where is that agreement?

A. I can't tell you where it is now.

174 Q. When was it made?

A. My recollection is it was concluded in the summer of 1900, in London.

Q. Where was it concluded?

A. I think it was concluded in London.

Q. Between whom?

A. I think it was between Mr. Mathieson and——

Q. You *think*. Do you know anything about it? Were you there?

A. I am answering your questions as well as I know. If you do not like it you can omit the answer. I think it was concluded in London by Mr. Mathieson and Mr. Hawes.

Q. What makes you think so? Were you there?

A. I was not.

Q. Then it is mere heresay, is it not?

A. That is correct.

Q. Was there a writing about it?

A. Yes, sir.

Q. That came into your possession as secretary, did it not?

A. Undoubtedly I should have seen it.

Q. What?

A. Yes, sir, I suppose there were several in connection with it.

Q. Where was the first agreement to sell this property made?

A. I don't know.

Q. Was it in writing?

A. I can't say that. I don't know.

175 Q. Which was the biggest plant of the two—the Saltville plant or the Niagara plant?

A. The Saltville plant.

Q. Which was the most profitable?

A. The Niagara plant.

Q. Which was the most valuable?

A. If it was measured by its actual earnings, the Niagara plant was the more valuable.

Q. A great deal more, was it not?

A. By the amount that it earned. I do not think it was, in fact, more valuable.

Q. As secretary of this company have you in your possession or did you ever have in your possession any agreement for the sale of the Niagara plant to anybody?

A. Well, it is a little bit difficult to give a direct answer to that, in this way——

Mr. MacFarland: No, I want an answer.

Mr. Ely: Let him answer the question. I submit he has that right.

The Master: Give the best answer you can. Answer the question but do not argue about the form of your answer.

A. To answer the question as directly as I know how, I do not know——

Mr. MacFarland: Stop right there. I do not want any
176 wabbling. Answer the question or refuse to answer it.

The Witness: I shall have to ask you to define the question more clearly.

Mr. MacFarland: Repeat the question.

Q. (Repeated.)

A. I don't know whether I had any precise paper of that character or not.

Q. If you had you must have had it some time during the last year, had you not?

The Witness: Some time during 1900?

Mr. MacFarland: Yes.

A. Yes, sir.

Q. But I suppose you might easily forget whether you had such a paper or not?

A. I have the final instrument of sale.

Q. No, do not wander. Keep your mind on precisely the question I ask you. If you had such a paper you might forget that you had it. If you had such an agreement for the sale of the Niagara plant you might forget that you had it. Is that it? Why do you not answer? Why do you delay so long to answer?

A. I will answer your question.

Q. You decline to answer the question?

A. No. I do not recollect whether there was a paper of that precise character or not.

Q. If you had had such a paper, is it a kind of paper which
177 you would be likely to forget about?

A. Yes, sir, whether it was a paper that would come under that exact definition I might not recollect.

Q. So you forget about the fact that you had such a paper or not: Is that it?

A. Yes.

Q. Do you think you ever had?

A. There were papers of——

Mr. MacFarland: No matter.

The Witness: There were papers of a similar character.

Q. I do not want that. Do you think you ever had such a paper as I have mentioned?

A. I don't know.

Q. You do not know what you think: Is that it?

A. I don't know whether I had it or not.

Q. I am not asking whether you had it or not. I ask you whether you think you had it. Do you know whether you think you had it? Why do you hesitate so long?

A. I do not recollect a paper of that character.

Q. Do you think you had it?

Mr. Ely: I submit that is a sufficient answer to the whole question.

Q. Do you think you ever had such an agreement as that?

Mr. ELY: I submit he has already answered the question.

178 A. I have already said that I do not recollect it.

Q. Do you refuse to say whether you ever had it or not?

A. I have answered it.

Mr. ELY: I submit that the witness's answer is complete.

The MASTER: Mr. Ely, I do not think so. Counsel is calling for the best impression on the subject. That is not an answer to the question.

Mr. MACFARLAND: You will answer or else refuse to answer. You cannot escape.

The MASTER: Mr. MacFarland's point is well taken that he is entitled to have that question answered.

The WITNESS: Will you restate just what sort of a paper that is to which you are referring? There were a number of papers relating to the sale. Whether it comes under this description or not I cannot say.

Q. I will put the question again so that you cannot mistake it. Have you forgotten the question?

A. I have forgotten the precise description you give to this paper to which you are referring.

Q. Do you think you ever had in your possession an agreement in writing for the sale of the Niagara plant?

A. I doubt that there was anything that could be called an

179 agreement.

Q. Do you know Mr. James M. Edwards?

A. Yes, sir.

Q. He is a director of the Alkali Company, is he not?

A. Yes, sir.

Q. Of the Mathieson Company?

A. Yes, sir.

Q. And he is a director in the Castner Company, is he not?

A. I believe so.

Q. Do you not know he is?

A. I do not.

Q. But you believe he is?

A. I believe he is.

Q. Do you know Mr. Richard T. Wilson?

A. Yes, sir.

Q. He is a director in the Mathieson Company?

A. Yes, sir.

Q. And a director in the Castner Company?

A. I understand so.

Q. Mr. Edward E. Arnold is a director in both those companies?

A. Yes, sir, he is, I know.

Q. Is Frank A. Sayles a director in both of them?

A. I think so.

Q. Is John G. Agar a director in both of them?

A. I think so.

Q. There are seven directors, are there not, of the Castner Company?

A. I so understand.

Q. And four of them are directors of the Alkali Company, are they not?

A. Those whom you have named, I understood to be.

180 Q. You say that the Mathieson Company is a stockholder in the Castner Company?

A. Yes, sir.

Q. How much stock of the Castner Company does it hold?

A. All of it.

Q. Where is that stock?

A. It is in Saltville.

Q. Where are the certificates?

A. In Saltville.

Q. Then they have never been issued?

A. Yes, sir, they have been.

Q. They have been issued?

A. Yes.

Q. What are they in Saltville for?

A. They are in the custody of the assistant treasurer in Saltville.

Q. Have the certificates ever been cut out of the book and handed to anybody?

A. Yes.

Q. Where were those certificates made?

A. They were made in New York; the date I can't recall. They may have been dated at the place of incorporation. I can't recollect that.

Q. Where were they made?

A. Where were they made out or where were they dated? I didn't make them out. I don't know that.

Q. What did you say they were made in New York for?

A. I said that because my first impression is they naturally would have been there. Afterwards I was not certain. They may have been dated in Virginia.

Q. Where were they printed? In Saltville?

181 The WITNESS: Do you mean by what company were they printed?

Mr. MACFARLAND: I mean exactly what I said.

A. I don't know.

Q. Where were they signed?

A. I don't know.

Q. By whom were they signed?

A. By the officers of the company.

Q. What officers?

A. By the president and secretary.

Q. Were they signed by you?

A. No.

Q. Were you not the secretary?

A. I was not.

Q. Who was the secretary?

Mr. ELY: Are you referring to the Castner Company?

Mr. MACFARLAND: Yes.

Mr. ELY: Mr. Gladding was never connected with that company.

A. I think the secretary is a Mr. Van Name, as I recall it. I am not connected with the Castner Company.

Q. Did those certificates ever come into your possession?

A. They passed through my possession.

Q. Did they ever come into your possession?

A. I didn't hold them in Providence. They were sent to Saltville.

Q. Did they ever come into your possession?

A. Not into my personal hands, no.

182 Q. What do you mean by your personal hands? Have you got some other hands?

A. If you want to ask intelligent questions I should be pleased to answer them, but I don't know that it is needful to ask this question if you want to obtain any more information.

Q. Did those certificates ever come into your custody and possession?

A. No, they did not.

Q. To whom were they delivered, in the first instance?

A. I can't say that.

Q. You do not know?

A. I can't say.

Q. Do you know what the persons did with them to whom they were delivered?

A. I am informed now that they are at Saltville, Virginia.

Q. No. Do you know? I do not ask how you were informed. Do you know anything about it?

A. Not except on information.

Q. You have no knowledge, then?

A. Not personal knowledge.

Q. So it comes to this: You do not know where the certificates were printed; you do not know where they were signed; you do not know to whom they were delivered; and you do not know where they are. That is all true, is it not?

A. I know where they are.

Mr. MACFARLAND: No, you do not.

The WITNESS: Very well. I don't know by having seen

183 them there. That is true.

Q. You mean that you have heard something? That is what you mean, is it not?

A. I have been advised to that effect.

Q. Why do you say *advised?* Do you think that is better than *heard?*

A. No, that is, I suppose the same word.

Q. Then what you mean is that you have heard that some certificates are in Saltville: is that it?

A. Yes.

Q. What other things besides these certificates did the Castner Company——

The WITNESS: What do you mean by that?

Mr. MACFARLAND: What other securities?

A. That is a matter of information. I don't know. I am not an officer of the Castner Company.

Q. You do not know?

A. I do not know.

Q. Do you know whether it made any bonds?

A. I am so informed.

Q. But you do not know?

A. I don't know it in the sense which I understand you to ask.

Q. In what sense do you understand me to ask?

A. I mean personal knowledge, by having had to do with the creation of a security.

Q. Why do you not simply say, as we do here in New York, that you do not know, instead of maundering about?

184 A. Your questions are often so misleading that I do not understand what the answer is.

Q. Do you know what other securities the Castner Company has created?

A. I do not.

Q. You do not?

A. I do not.

Q. Or what has become of them?

A. I do not.

Q. Do you know when this property was actually delivered over to the Castner Company?

A. Yes.

Q. When? What day?

A. In January of 1901.

Q. Were you there?

A. No, I was not at Niagara Falls.

Q. Then what do you know about it?

A. I know that we had before that been conducting its affairs from Providence, and we ceased to do so.

Q. Since then it has not conducted any affairs at Providence, has it?

A. We have not had to do with the management at Niagara Falls since the transfer. That has passed into the hands of the officers of the Castner Company.

Q. The Mathieson Company has not had any business at Providence, has it, since then?

A. Certainly, it has.

Q. It has not in New York?

A. It has not in New York.

Q. How do you know that?

A. As an officer of the company I should know that.

Q. How do you know it?

185 A. Because I have seen no business.

Q. Seen what?

A. I have seen no business having to do in New York.

Q. But you do not come here but once in two or three months. How do you know what it does here?

A. As the treasurer of the company I naturally would have known if it had any business here.

Q. Then you know because you naturally would know; is that it?

A. Yes, sir.

Q. And that is the only way you know?

A. That is the only way.

Q. About this turning over of the property at Niagara Falls; that is hearsay, too, is it not?

A. I know we surrendered possession.

Q. Is that hearsay or actual knowledge? Do you know when that property was transferred from one set of hands to another?

A. Yes, sir.

Q. Physically?

A. Not physically. They can't pick it up and transfer it.

Q. Then you are speaking of paper transfer?

A. Certainly.

Q. That is all you mean?

A. Yes, sir.

Q. But can you tell me of any one single thing of any kind that has taken place since that paper transfer, down to the present time?

186 A. We ceased to control it from Providence, where the offices of the company are.

Q. I do not want any verbal change. I want some physical matter, some actual thing, that has been done differently?

A. In Providence we never had to do with it. In a physical sense we did not handle it in Providence. It was only at Niagara.

Q. To go back to Providence again one moment, before I forget that: you say you have got a lot of books there?

A. Yes, sir.

Q. Have any books been sent to you within the last six months, from New York? Think, now?

A. I do not recall any.

Q. Will you swear that none have been sent to you within the last six months?

A. No, I won't make an absolute oath on that.

Q. You would not make an oath on that? What do you think about it?

A. I don't think any have been.

Q. Why can you not swear to it then? What makes you doubt?

A. Merely that it is a little difficult to swear to a general negative. I have no recollection of any being sent.

Q. Would you not remember it if any had been sent?

A. I should think that I would remember it.

Q. Why can you not swear bluntly that none have been sent to you?

187 A. I understand there is a difference between making an oath absolutely that none have been and saying to the best of my rememberance there have been none.

Q. Then you do not know whether there have been or not?
A. To the best of my recollection there have not been.
Q. Is not that a thing you would remember, being secretary of the company?
A. I think I would. I should think I should remember it.
Q. And you cannot swear to that?
A. Mr. Referee, is not that answer of mine sufficient? I do not want to make an absolute oath.
The MASTER: I think the witness's answer seems to be responsive.
Mr. MACFARLAND: I want to know precisely what books you have got there.
The WITNESS: We have the books of the Mathieson Alkali Works.
Mr. MACFARLAND: That does not answer my question. That is nonsense. Give me an inventory of the books you have got there.
The WITNESS: I cannot give you a complete inventory of the books, but the general manufacturing and other similar books of the company.
Mr. ELY: I object to this.
The MASTER: Was not that asked and answered yester-
188 day? Did he not enumerate the books yesterday?
Mr. MACFARLAND: No, I don't think so.
Mr. ELY: Yes, sir, he did.
Q. How many ledgers have you got there?
Mr. ELY: I would like to ask what that has to do with this proposition?
The MASTER: I am not prepared to say yet that it is time to stop inquiry on apparently irrelevant matters, but I understood it was covered yesterday.
Q. How many ledgers have you got there?
A. There are, I think, three ledgers.
Q. Three?
A. Maybe four. Four—there are.
Q. If you do not do any business in Rhode Island what do you put into your ledgers? Where do you get it?
A. I have not said we do not do any business in Rhode Island.
Q. What business do you do there?
Mr. ELY: I object.
A. Conduct the general affairs of the company, which require varied ledgers.
Q. What particular affairs of the company do you conduct there?
A. We conduct the accounting of the company, which is reported from Saltville, and pay the accounts of the Mathieson Alkali Works.
189 Q. Where do you get the material from that you put into those ledgers? From New York and Saltville?
A. We do not get any from New York. We get it from Saltville.
Q. You do not get anything from New York?
A. No.

Q. Never got anything from New York to put into your ledgers?
A. We do not get any reports from New York.
Q. Did you ever get anything from New York to put into your ledgers?
A. I would not say that there may not have been items in the past. For example, I told you that at one time we borrowed money from R. T. Wilson & Company. That went on the ledger, of course.
Q. Is there nothing from New York in your ledgers except money borrowed from R. T. Wilson & Company?
A. That is all.
Q. Do you get anything from Arnold, Hoffman & Company?
A. Yes, sir.
Q. Are they not in New York?
A. It is not reported to me from New York. It is reported to me from their Providence office, which is the only office I recognize. Where they do their business is their affair. I do not know.
Q. Do you put in your Providence ledger your transactions with Arnold, Hoffman & Company?
A. Yes.
Q. You do?
A. We do.
190 Q. Those transactions take place here, do they not?
A. Not chiefly. I don't know of its coming from here. They are reported to me from Providence, where they maintain their office, and it is their affair. I do not know.
Q. You do not know them as coming from here?
A. We do not.
Q. Then when you get things to put into your ledgers you do not know where they come from: is that it?
A. Yes, sir, I do know where they come from to me. I don't know beyond that.
Q. When you get things to put in your ledgers do you know where they come from?
A. Yes, sir.

Mr. ELY: He has answered the question. I object.

Q. Did you not just swear that you did not know?

Mr. ELY: You did not hear him. Read the answer.

Q. Did you not just swear that you did not know that anything came from Arnold, Hoffman & Company?
A. No, I did not.
Q. Then you do know, do you not?
Q. I do know that many of our entries do come from Arnold, Hoffman & Company.
Q. Many, or only a few?
A. Many.
191 Q. Well, inasmuch as Arnold, Hoffman & Company sell all your stuff, a *good many?*
A. Yes, sir, a good many.

Q. And Arnold, Hoffman & Company carry on their business here?

A. Their office is in Providence. The office of Arnold, Hoffman & Company is in Providence. That is where the president and treasurer of that company are.

Q. They do not do any business here, then?

A. Yes, they do, I am told. They maintain an office here; but that is not their principal office.

Q. You are in some doubt about it, are you not?

A. I know they have an office here. Naturally they transact business in it.

Q. They do not do much, do they?

A. I can't tell what part of their business is done here. I don't know what part is done here.

Q. Do they do their main business in Providence?

A. Yes, sir.

Q. Do they sell their goods there?

A. Yes, sir.

Q. Do they sell most of their goods in Providence?

A. Yes, sir, so I am told.

Q. Arnold, Hoffman & Company sell most of their goods in Providence?

A. Yes, sir. They do not sell much of their goods to customers in Providence, but most of them are sold from Providence.

Q. From Providence?

A. Yes, sir.

192 Q. Who told you that?

A. They have.

Q. They?

A. Yes, sir.

Q. Who is *they?*

A. Arnold, Hoffman & Company.

Q. Which one of them?

A. Both Mr. Arnold and Mr. Hoffman.

Q. Did you ask them?

A. I don't know that I ever put the question to them categorically and got the answer yes. Yes, they have told me. I have asked them, in general terms.

Q. Why did you ask them? Did you want to know where they sold their goods?

A. Well, I can't say whether I ever asked the question in a direct way and got a direct answer.

Q. What do you mean by direct way? Did you ask it in an indirect way?

A. I mean that the knowledge of their dealings in Providence has come in a general way through many instances.

Q. Then we are to understand that you know it from many instances? Is that it?

A. Yes, sir.

Q. And not from anything they said to you?

A. Yes, sir, they said it also.

Q. Can you mention when?
A. No, I can't say that.
Q. Can you mention in what year?
A. I should say probably in every year.
Q. Can you tell us how they happened to mention to you
193 where they sold their goods?
A. Because it is many of our goods that they have sold.
Q. Do you know what proportion they sell in Providence and sell here?
A. I do not.
Q. Where was the deed of this Castner property made, do you know?

Mr. ELY: I object to that. The deed is in evidence and speaks for itself.
Mr. MACFARLAND: Answer the question, where was the deed made?
The WITNESS: May I see the deed, then?
The MASTER: Certainly, if you do not recollect it without seeing it.

A. It was signed and acknowledged in Providence.
Q. In what place was it made? In what place was the deed written?
A. I think the deed was in Providence.
Q. Where was it written?
A. In Providence.
Q. By whom?
A. In our office.
Q. By whom?

The WITNESS: Do you mean who the typewriter was?

Q. Who drew that deed?
A. I think Agar, Ely & Fulton drew the deed.
Q. What you mean is that somebody signed it in Providence?
A. Yes, sir.
194 Q. You do not mean that it was drawn there, do you?
A. I did not. I meant that this copy was made there.

Mr. ELY: Referring to Defendant's Exhibit No. 2. Add that to your answer.

Q. Who put that deed on record? Did you?
A. I did not.
Q. Do you know why it was withheld from record until February?
A. I can't say that.
Q. You had nothing to do with recording it?
A. Not personally.
Q. What did the Castner Company give the Alkali Company for this Niagara plant?
A. Gave it its stock.
Q. What?

A. Its capital stock.
Q. Anything else?
A. No. It gave its capital stock.
Q. Merely its capital stock?
A. Yes, sir.
Q. Nothing else?
A. Not to my knowledge.
Q. Do you know how much stock the directors in the Castner Company hold—any of them?
A. I don't know as to that.
Q. You do not know?
A. No.
Q. Do you know how much stock any of the directors of the Mathieson Alkali Company hold in that company?
A. No, I do not. Do you mean in the Castner Company?
Q. I said the Mathieson Company. Do you know how much stock the directors hold in that company?
195 The WITNESS: Do I know how much stock the directors of the Mathieson Company hold in the Mathieson Company?
Mr. MACFARLAND: Yes.
A. They hold a majority of it.
Q. Do you know how much each individual director holds?
A. I can't give you that, out of my head, not the exact amount.
Q. Do you know how much any one of the directors holds?
The WITNESS: Do you mean the number of shares, generally?
Mr. AGAR: Yes.
A. Yes, sir.

Mr. ELY: How is this material?

Q. Take for example this: how much capital stock of the Mathieson Alkali Company does Mr. Edward E. Arnold hold?
A. I think it is about $300,000.
Q. R. T. Wilson?
A. It is understood in these answers I am speaking from recollection.
Q. What is your recollection?

Mr. ELY: You may state, "according to my recollection."

A. According to my recollection Mr. Wilson holds something over 40,000 shares; something over four millions of dollars. And Mr. Arnold's would be $300,000.
196 Q. Four millions of dollars of stock?
A. Yes, sir.
Q. Mr. Agar? Do you know?
A. I think it is from one hundred and fifty to two hundred.

By Mr. ELY:

Q. Thousand dollars?
A. Thousand dollars.

By Mr. MacFarland:

Q. Mr. Ely?
A. I think about ten to fifteen thousand dollars. Ten to twenty thousand dollars.
Q. How much do you hold?
A. About $15,000.
Q. How much does Mr. Sayles hold?
A. Which one do you wish? There are two Sayles.
Q. Frederick Sayles?
A. Frederick C., I think about $500,000. Frank A. I think about $400,000.
Q. Mr. Hooper?
A. I do not accurately recall. I should say about $20,000. Twenty to thirty thousand dollars.
Q. You have said, I think, that a special meeting was called for the purpose of authorizing the sale to the——

Mr. Ely: I do not think that any such statement is on the record or has been alluded to in any way.

Q. Was there a special meeting called for the purpose of authorizing the sale of the Castner Company?
A. Yes, sir.
Q. When was that special meeting called?
197 A. I think it was in June, 1900.
Q. Do you not know?
A. I am speaking my recollection. My best recollection is that it was in June, 1900.
Q. Where was it held?
A. At Saltville, Virginia.
Q. When were the notices for that meeting sent out?
A. They were sent out in accordance with the by-laws, in due time.
Q. I repeat the question: when were they sent out, do you know?
A. I know that they were sent out in accordance with the by-laws. I cannot recall the day. They were sent out in the legal time.
Q. What is the legal time?
A. That is according to the by-laws. I think it is. (Looking) Twenty days before the meeting.
Q. And what by-law makes it twenty days?
A. That is article first.
Q. Will you read it?
A. The whole article? Or that part which appertains to this?

Mr. Ely: I object to it.
Mr. MacFarland: In regard to the notice of meeting.

A. (Reading) "Special meetings of stockholders may be called at any time by the board of directors, or by any number of stockholders owning together as much as one-tenth of the entire capital

stock, upon giving notice of the time and place for such meeting for at least thirty days, by publication in a newspaper published at or near the place at which the last annual meeting was held, and notice of said meeting shall be forwarded by mail to each stockholder of record, postage prepaid, at least twenty days before such meeting."

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Q. Was there a call for this special meeting?
A. Yes.
Q. Where is it?
A. The notices were sent to the stockholders.
Q. Where is that special call recorded?
A. It is recorded in the minutes of the meeting.
Q. Of what meeting?
A. Of the meeting for which the notice was sent.
Q. Of this special stockholders' meeting?
A. Yes.
Q. Where are those minutes?
A. The minutes are not here.
Q. Where are they?
A. They are in Providence.
Q. Why have you not brought them here?
A. I know of no reason why I should bring them here.
Q. Why shouldn't you bring them here?

Mr. ELY: Do not answer that.

A. I had no occasion to bring the minutes of the company here, that I know of.
Q. Have you not been notified to bring them?
A. I have not.
Q. Have your lawyers said anything about your bringing them?

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A. I have had no notification to bring them here.
Q. Have your lawyers said anything about your bringing them here?
A. They have given me no notification to bring them here.
Q. You may wabble as long as you like but you will land by answering my question and therefore you might as well answer it in the beginning. I repeat the question.

Mr. ELY: This same question was asked yesterday and was answered on the record. He said he had no notice at all to bring any of them here.

The MASTER: Answer the question.

A. No.
Q. Why did you not say no in beginning?

Mr. ELY: Do not answer the question.

Q. You have no answer to that question, have you?
A. I have no answer.
Q. Will you bring them here—the notice of this special meeting? Will you bring it here? Will you answer that question?

Mr. ELY: We will produce a copy of the notice of that special meeting, if you want it, with the greatest pleasure. Your
200 clients have all got them. Mr. Geer and Mr. Mathewson and Mr. Morris; and your client Mr. Smith attended in person; and you also state so here in your bill of complaint.

Q. There is a good deal of this stock held in England, is there not?

A. No, there is not. Stock in the Mathieson Alkali Works? No, there is not very much.

Q. There is a good deal of it, is there not?

A. No.

Q. Did you ever in your life send a notice to any English stockholder in time to enable him to get to Saltville to attend a meeting if he wanted to?

Mr. ELY: I object. That is not the question in dispute. It has no relevancy. If the notice was sent according to the by-laws, that is all the notice that is required.

The MASTER: You can answer the question.

Q. I want an answer to the question whether you will produce your record, your minutes, of that special meeting at which a sale of the Niagara plant was authorized. Will you or will you not?

A. I can only act under the direction of the board of directors, in that respect.

Q. Will you ask the direction of the board of directors?

The WITNESS: Is that a question to be answered?

Q. Why do you look to your lawyers? Take down this question. (To the stenographer.) I want a photograph of these pro-
201 ceedings. Why do you turn to your lawyers and laugh? Is the question amusing?

A. It seems to be, in a way.

Q. I will repeat it. Will you ask permission of your board of directors to bring the minutes here of that special meeting?

A. If it is your request, I will. If it is your request that I do so, I will ask them.

Q. You will what?

A. I will ask them, if it is your request that I should do so.

Q. Will you let us know what they say—whether they give you permission or not?

A. I may have to.

Mr. MACFARLAND: I give you notice to produce them at the next hearing; and I shall want to know why you do not if you do not.

Q. Were you present at that special meeting?

A. I think not.

Q. Who took your place?

The WITNESS: As secretary?

Mr. MACFARLAND: Yes.

A. I do not recall. Somebody who was named at the meeting. I think it was probably Mr. Goetchrus.

Q. Who attended at that meeting?
Mr. ELY: If you were not present how can you tell?
The WITNESS: By person and by proxy?
Mr. MACFARLAND: I am not talking now about proxies.
202 A. I do not recall.
Q. You do not know who was there?
A. I do not.
Q. Was there a single stockholder there?
A. Yes.
Q. Who?
A. I do not recall.
Q. Then why do you say yes if you do not know?
A. Because I know the meeting was held.
Q. Was there a single stockholder at that meeting, that you know of? You do not, do you?
A. I know there were some there, but just who they were, I do not remember.
Q. How do you know there were any there?
A. The records show that there were.
Q. That is the only way you know?
A. Yes.
Q. And how many you do not know?
A. I do not.
Q. What was the proposition laid before that meeting?
A. That was shown in the notice of the meeting. I haven't that before me.
Q. Why did you put the name of the Castner Company in your testimony yesterday? Why did you put it in your letter?
A. I do not understand your question.
Q. You said, in reference to your letter, yesterday, when you spoke of the Mathieson Alkali Company—you meant the Castner Company, did you not?
A. I don't think so.

Mr. ELY: There is no such question and answer on the record.

Q. Have you got anything to take back, that you put in
203 this letter of yours, Exhibit A?
A. No.
Q. Have you got anything to add to it?
The WITNESS: Have I anything to add to that letter now?
Mr. MACFARLAND: Yes.
A. Not if the letter is read in view of the previous correspondence.
Q. Is it true as far as it goes?
A. It is true, taken in connection with the other letter.
Q. Is it untrue if it is not taken in connection with something else?
A. I think it might be misleading, taken in that way.
Q. How would it mislead anybody?
A. A person not having the previous letter might think that the expression that we were building the works at Niagara Falls refer-

ring to the Mathieson Alkali Works, when it was not so intended, as the previous letter would clearly show.

Q. Then if there were not any previous letters we should be quite right in supposing that you referred to the Mathieson Alkali Works, should we not?

A. I can see that a person taking that letter alone might think so.

Q. If we hadn't any previous letters we should be quite right in supposing you referred to the Mathieson Alkali Works?

A. If a body were entirely unfamiliar with all the circumstances.

204 Q. Do not commence your preaching. We are not accustomed to it. Life is so short and we are so busy we come to the point here. If now we had not any circumstances or any previous letters, we should be quite right in taking it that you meant the Mathieson Company, should we not?

A. If that letter were taken by itself, unrelated——

Q. Do not: answer the question: you have got to answer it. You know you have to answer always, sooner or later. Why not come up as a man?

Mr. ELY: I should like to ask the referee whether all this talk of Mr. MacFarland's constitutes a part of the question?

The MASTER: When the question is repeated the stenographer will so note, without putting down the remarks of counsel.

Q. I ask you, if there were not any circumstances or any preceding letters, would we be right then in supposing that you referred to the Mathieson Alkali Company?

A. Taken apart from the——

Q. Do not answer that way. Will you answer the question precisely as I put it?

The WITNESS: Have I the right to answer it in my own way?

The MASTER: Yes, so that it is responsive to the question.

205 A. I will try to make it so. Taken apart from the previous correspondence——

Mr. MACFARLAND: I did not call for that.

The WITNESS: Taken apart from the previous correspondence and unrelated to the facts, the letter might be misleading.

Q. I just asked you this question. If there were not any previous correspondence should we then be right in supposing that you referred to the Mathieson Alkali Company?

A. I have given an answer that I think covers that.

Mr. ELY: I submit it is responsive and sufficient.

The MASTER: I think the answer covers that.

Q. Do you say yes?

The MASTER: I think the answer is responsive as it stands now.

Q. What previous letter is it that you refer to as explanatory of what you meant?

A. The letter is already in evidence.

Mr. MACFARLAND: Produce it then. Let me see it.

(The witness produces the letter marked "Defendant's Exhibit No. 1.")

Q. This letter, dated August 28, 1900?

A. Yes, sir.

206 Q. This letter which you refer to as explaining Exhibit A for identification I notice is dated August 28, 1900. The letter about which I have been interrogating you and which is marked Exhibit 1 is dated March 15, 1901?

A. It refers to that. The letter of which you have been asking is March 15, 1901.

Q. When you wrote this letter of August 28, 1900, there had not been any conveyance to the Castner Company, had there?

A. No.

Q. Since writing (you say) on the 13th of July, the plan for separating the Castner plant and patents from the rest of the company has been materially advanced. What do you mean by *materially advanced?*

A. I meant negotiations for carrying that out had been carried along.

Q. "Advanced"?

A. Yes, sir.

Q. Not *concluded*, but *advanced?*

A. Yes, sir. That is what the letter says.

Q. You had not made any agreement at this time with anybody, had you?

A. I don't know when this negotiation was completed.

Q. You must answer my question. At this time had you made any agreement with anybody for the sale of this property?

A. I do not recall.

Q. The funds derived from the sale of the new company's bonds are to be applied for the building of the additional plant. Did the new company issue any bonds?

207 A. I am so informed.

Q. You do not know anything about it?

A. I haven't had to do with that personally. I am not of the Castner Company.

By Mr. ELY:

Q. You are not connected with the Castner Company?

A. I am not connected with the Castner Company.

At 1 o'clock p. m. adjourned to Wednesday, November 13, 1901, at 11 o'clock a. m.

Last exhibit: Plaintiff's No. 1
Defendant's No. 2.

208 CONLEY
vs.
ALKALI WORKS.

NEW YORK, *November* 13, 1901—11 o'clock a. m.

Present: The Master; Mr. MacFarland for the plaintiff; Mr. Ely for the defendant.

Mr. MACFARLAND: There are no revenue stamps on that deed, (referring to Defendant's Exhibit No. 2) that I am able to see and therefore I object to it as evidence.

The MASTER: I will receive it, in view of what counsel stated.

Mr. ELY: I would like to put this statement on the record.

Mr. MACFARLAND: I object to that, unless you take the witness stand and make it in that way. We cannot take your statements as evidence.

The MASTER: I will not take the statement. I do not see that it is necessary. The document says "Duplicate original stamped."

JOHN RUSSELL GLADDING, being further cross-examined, testified as follows:

By Mr. MACFARLAND:

Q. Do you know the plaintiff in this action, Mr. Mathieson?
209 A. Yes, I do.
Q. When did you first meet him?

Mr. ELY: He is not the plaintiff in this action. Do not answer the questions before you understand them.

The WITNESS: I do not know the plaintiff.

Q. Do you know Mr. T. T. Mathieson?
A. I do.
Q. When did you first meet him?

Mr. ELY: I object. The plaintiff in this action, and the cause of action, is not in controversy on this reference. This is irrelevant and immaterial.

Objection sustained.

Mr. MACFARLAND: Will you take my offer?

Mr. ELY: I object to any offer going on the record.

Mr. MACFARLAND: I offer in evidence a contract upon which this action is brought, made between the Mathieson Alkali Works and T. T. Mathieson, on the 1st day of February, 1893, and I offer to prove——

Mr. ELY: I object to any offer to prove with reference to this contract. The contract itself is set up in the complaint, in full.

The MASTER: Let him state his offer and then you can object.

Mr. ELY: I do not think it ought to be on the record.

The MASTER: I cannot pass on anything until I have
210 had an opportunity to see what it is.

Mr. MACFARLAND: I offer to prove that the contract was

made in the city of New York, at the time of its date, and executed there.

Mr. Ely objected to the offer being received.

Objection sustained. Exception taken.

Q. How did you know that the capital stock of the Castner Company, that belonged to the Alkali Company, is at Saltville?

A. That is a matter of information which has come to me in the course of my duties as treasurer of the company.

Q. Then it is hearsay?

A. It is based on such information as constitutes most of my sources——

Q. It is hearsay?

Mr. ELY: I object to that as a characterization and as a conclusion of law.

The MASTER: Let him answer.

Q. From whom did you get the information?

A. I had the information from the assistant treasurer, in whose custody it is.

Q. How did you get it?

A. I got it by letter.

Q. Where is that letter?

A. I haven't it in my possession here.

Q. When did you get it?

A. I don't recollect.

Q. How long since?

A. I don't recollect the time at which I got it.

211 Q. About how long?

A. I can't recall. I have known the facts for some time.

Q. Within one month?

A. Oh, a longer period.

Q. Within two months?

A. Oh, it is many months ago that I was advised of it.

Q. By a letter?

A. By a letter.

Q. By a letter from the assistant treasurer?

A. I have had letters from him confirming the fact. I do not recollect their dates. I have known of the fact.

Q. Did you get a letter from the assistant secretary at Saltville informing you that that stock was in his possession?

A. Yes, sir.

Q. When?

A. I said I could not recall.

Q. Isn't it in your possession?

A. I haven't it here.

Q. Is it in Providence?

A. It must be, I think. To the best of my recollection it is.

Q. Was it written to you?

A. I do not recall that fact.

Q. You do not know whether the letter was written to you?

A. I do not recall whether it was addressed to me or addressed to others and given to me.
Q. And you do not recall when it was given to you?
A. I do not.
Q. And you do not know where it is?
A. I do not. I don't recollect.

212 Q. That is the source of your information, then about the location of the stock.

A. Yes, sir, that and others.
Q. That is all you know about it?
A. That is not all I know. I have also been informed by others — the circumstances.
Q. Whom?
A. I have been informed by Mr. Agar.
Q. When did he inform you?
A. I do not recall. Some time ago.
Q. Did he tell you it was in Saltville?
A. Yes, sir.
Q. Did he tell you when it had been sent there?
A. I do not recollect the date.
Q. Did he tell you why it had been sent?
A. For custody. To be put in the custody of the assistant treasurer.
Q. Were you not the proper custodian of that stock?

Mr. ELY: I object to that as a mere conclusion.

Q. Were you not, in your official capacity, the custodian of that stock?

Mr. ELY: I object to that for the same reason, and as absurd. I submit that the custody of the assistant treasurer is the custody of the treasurer.
The MASTER: I will allow it.

Q. Were you not, as secretary and treasurer, in your official capacity the proper custodian of that stock?

Mr. ELY: I object to it as improper.

A. I suppose it is equ-lly proper to be in the custody of the assistant treasurer.

213 Q. Do you say that this deed to the Castner Company was authorized at this special meeting of June 19, 1900?

A. It was authorized at an adjournment of that meeting?
Q. Not at this June meeting?
A. Not on June 19. At an adjournment of that meeting.
Q. When was that meeting adjourned to?
A. My recollection is that it was passed upon on August 4, 1900.
Q. At what place?
A. At Saltville.
Q. Was the meeting adjourned to August 4th?
A. Yes.
Q. Was it adjourned, June 19, to August 4th?

A. My recollection is that it was not on June 19 adjourned to August 4 but to another date, and that the meeting of August 4 was a subsequent adjournment.

Q. Can you tell me when the meeting of June 19 was adjourned to?

A. I do not recollect.

Mr. ELY: I object to this also as impertinent and immaterial and as not cross-examination.

The MASTER: I will let him answer it.

Q. Will your records show when the meeting was adjourned to?
A. The record will show.
Q. Where is the record?
A. The record was in Providence.
Q. Were you asked to bring it?
A. I was asked by you at the last session.
Q. Why have you not brought it?
A. I have no authority to bring it.
Q. Have you asked for any?
214 A. I have had no opportunity to ask for it.
Q. Who had you to ask?
A. I had to ask my board of directors.
Q. In session?
A. In session.
Q. And there has been no meeting of your board?
A. There has not.
Q. That is the reason you did not bring it?
A. That is the reason why I did not ask.
Q. That is not the reason you did not bring it, then?
A. That is the reason why I have not asked them.
Q. What is the reason you did not bring it?
A. The reason was that I had no authority.
Q. When do you think that meeting of June 19 was adjourned to?

Mr. ELY: I object. He has testified he had no recollection.

The MASTER: Has he?

The WITNESS: I have no recollection.

Q. Do you know who was present at the meeting of June 19?
A. I do not recall the individuals.
Q. Were you there?
A. I was there by proxy.
Q. Did I ask you if you were there by proxy?

Mr. ELY: I object to that.

A. I said I was there by proxy.
Q. You were not there in person?
215 A. I was not there in person.
Q. Who was your proxy?
A. I do not recall.
Q. Then you do not know what was done?
A. I know from the record.

Q. What was done?
A. I do not recollect the terms of the record.
Q. What was done at the meeting of August 4?
A. As I recall——

By Mr. ELY:

Q. Wait. Were you present?
A. As I recall the record as it was made——

Mr. MACFARLAND: Wait, I object.

A. (continued). The vote of the stockholders was given——

Mr. MACFARLAND: Wait a moment.

A. (continued). Authorizing the sale of the property to the Castner Company.

By Mr. MACFARLAND:

Q. Wait a moment. Why did you not stop when I made an objection? Were you anxious to get it on the record?
A. No. I was answering the question.

Mr. MACFARLAND: I ask to have that answer stricken out.
The MASTER: Strike it out.
Mr. ELY: I object. His answer is responsive to his question.

216 Q. Were you personally present at that meeting?

The WITNESS: August 4th?
Mr. MACFARLAND: Yes.

A. No.
Q. Were you there by proxy?
A. Yes.
Q. Who was your proxy then?
A. I do not recall.
Q. There was no special call for that meeting of August 4th?

Mr. ELY: I object. That question has already been answered. Moreover, the merits of this conveyance are not under consideration, whether a valid or invalid conveyance. I object to this whole line of examination.

The MASTER: I will allow the question about this special-meeting notice.

A. There was a special notice for the meeting of June 19, of which the meeting of August 4 was an adjournment.
Q. Then there was no special call for the meeting of August 4th?
A. I think the answer to that question was covered in the statement I have already made.
Q. Do you decline to answer any further way?
A. I do not see that anything further is required.
Q. Will you answer or refuse to answer?
A. Is my answer sufficient, Mr. Referee?

The MASTER: Cannot that be answered yes or no.

217 The WITNESS: Does he mean whether there was a special notice for the meeting of August 4th, given subsequent to the date previous?

The MASTER: Read the question.

Q. (Repeated.)

A. I think this covers it; there was no special notice other than that for the meeting of June 19.

Q. Did you hold an annual meeting on the 6th of September?

A. There was an annual meeting held in 1900. I think September 6th was the date. As my recollection goes, September 6th was the date.

Q. Were you present at that meeting?

A. My recollection is that I was.

Q. That you were?

A. That I was.

Q. Personally present?

A. That I was personally present.

Q. Could you not remember?

A. My recollection is that I was personally present.

Q. Can you be certain?

A. My recollection is that I was personally present.

Q. Will you say positively that you were?

Mr. ELY: I object.

Q. Why do you say it is your recollection. You know whether you were or not, do you not?

A. My recollection is that I was present at that meeting.

Mr. MACFARLAND: You must answer the question.

Mr. ELY: Is not that an answer? Has he not fully answered the question?

218 The MASTER: You can answer.

The WITNESS: I recollect that I was present.

Q. Then you are certain that you were present?

A. Yes.

Q. Why did you not say so before?

A. I think the answers were to the same effect. They were so intended.

Q. Do you know who was there?

A. I do not recolleet who were present.

Q. Do you recall one person who was present?

A. Yes.

Mr. ELY: I object to that. The question of the annual meeting in 1900 is not before you, or any of its proceedings or anything connected with it. It is irrelevant, immaterial, impertinent to the issue and not cross-examination.

The MASTER: Do you propose to connect it with the spring of 1901? And, if so, how?

Mr. ELY: I will ask that Mr. MacFarland be required to state in what way he proposes to make it material.

Mr. MACFARLAND: Let me put a question. I ask the witness who was present, so far as he is able to remember, at the annual meeting of September 6.

Mr. ELY: I object to that as being immaterial, improper, impertinent to this issue and as not cross-examination.

Question excluded.

219 Q. I ask you if any action was taken at that meeting concerning the conveyance to the Castner Company?

Mr. ELY: I object for the same reasons given in my preceding objections.

Decision reserved.

At 1 o'clock p. m. adjourned to Tuesday, November 19, 1901,—at 11 o'clock a. m.

Last exhibit: Plaintiff's No. 1
Defendant's No. 2.

220 CONLEY
vs.
MATHIESON ALKALI WORKS.

NEW YORK, *November* 19, 1901—11 o'clock a. m.

Present: The master. Mr. Ely for the plaintiff. Mr. MacFarland for the defendant.

Mr. MACFARLAND: Upon going over the stenographer's notes I find that I have no other questions to ask of this witness.

Mr. ELY: I want to offer in evidence a certified copy of the certificate of incorporation of the Mathieson Alkali Works, duly certified under seal.

It is received in evidence and marked "Plaintiff's Exhibit No. 2."

Mr. ELY: I also offer in evidence the certificate of the incorporation of the Castner Electrolytic Alkali Company, incorporated on June 29 or July 2, 1900. Not knowing the laws of that State, I do not know which date controls.

It is received in evidence and marked "Plaintiff's Exhibit No. 3."

Mr. ELY: I will also offer in evidence a mortgage or trust deed by the Castner Electrolytic Alkali Company to William
221 Mather, M. P. and others, bearing date July 1, 1900, recorded July 26, 1901, in Niagara county, New York.

Mr. MACFARLAND: I object to that document as wholly irrelevant.

The MASTER: I will receive it.

Mr. MACFARLAND: I object to it on the further ground that it is not properly stamped.

Objection overruled. Exception by Mr. MacFarland.

It is received in evidence and marked "Plaintiff's Exhibit No. 4."

JOHN RUSSELL GLADDING, being further examined, testified as follows:

Redirect examination by Mr. ELY:

Q. You have been asked on your cross-examination some questions regarding the sale of its products by the Mathieson Alkali Works. Please state how the products of the Mathieson Alkali Works were sold from the period of a year prior to April 18, 1900?

Mr. MACFARLAND: I object to the question. It already appears that the whole product was sold through Arnold, Hoffman & Company, under an arrangement with that company, in writing. Let the contract be produced.

The MASTER: I will allow it.

A. Except for salt and bicarbonates, which are sold from Saltville, all the product of the Mathieson Alkali Works is sold
222 from Providence, under the direction of Mr. Arnold, to Arnold, Hoffman & Company, who are also in Providence. No sales of any kind made at Providence are made except by the specific authority of the Mathieson Alkali Works. Arnold, Hoffman & Company act only as the selling agents, subject, in every instance, to the approval of the Mathieson Alkali Works.

Q. Are all sales in every instance submitted to the Mathieson Alkali Works at Providence?

A. They are, in every single instance.

Q. And approved or disapproved at Providence by the company?

A. In every instance.

Q. Before being excepted?

A. In every case.

Q. Excepting those sold at Saltville?

A. Excepting those sold at Saltville.

Q. What is Arnold, Hoffman & Company?

A. Arnold, Hoffman & Company is a firm doing a general chemical business and acting in relation to the Mathieson Alkali Works as their selling agents.

Q. Is Arnold, Hoffman & Company a corporation or not?

A. Yes sir.

Q. A corporation of what State?

A. Rhode Island.

Q. Where does it have its head office and place of business?

A. At Providence.

Q. Where do you have your dealings with Arnold, Hoffman
223 & Company. That is, I mean where do you, as an officer of the Mathieson Alkali Works, have all your dealings with Arnold, Hoffman & Company?

A. At Providence only.

Q. You have alluded in your testimony, or the counsel for the plaintiff has made reference to Arnold, Hoffman & Company in New York. What are the facts in reference to that?

A. The facts in reference to that are so far as dealings are con-

cerned by the Mathieson Alkali Works with Arnold, Hoffman & Company, we do not know of the existence of them in New York. Our dealings are only and solely with Arnold, Hoffman & Company in Providence.

Q. Are your products sold on contract for future deliveries or not?

A. They are largely so.

Mr. MacFarland: I object to that as immaterial.

Objection overruled.

A. (continued). On contract for future delivery. Almost entirely. Almost altogether sold on contracts for future delivery.

Q. And these contracts are submitted to the Mathieson Alkali Works at Providence, before being accepted by it?

A. In every case.

Q. And these contracts in every case are accepted on behalf of the Mathieson Alkili Works only at Providence?

A. Yes.

Q. When goods are shipped in fulfillment of such contracts, what is the method of dealing of the Mathieson Alkali Works in

224 the matter?

A. The goods were sold by the Mathieson Alkali Works to Arnold, Hoffman & Company.

Q. In every instance?

A. In every case.

Q. Where?

A. At Providence.

Q. And who pays for the goods?

A. Arnold, Hoffman & Company pay the Mathieson Alkali Works.

Q. Where?

A. At Providence.

Q. Who makes the deliveries of these goods under the contracts for future delivery which you have previously referred to?

A. Arnold, Hoffman & Company.

Q. For their own account?

A. For their own account.

Q. Have you any dealings, or has the Mathieson Alkali Works any dealings, with reference to these goods except with Arnold, Hoffman & Company in Providence?

A. They have not.

Q. After the contracts for future delivery have been accepted by the Mathieson Alkali Works at Providence?

A. No.

Q. Then the making of the sales of its products forms part of the business of the Mathieson Alkali Works conducted at Providence?

A. It does.

Mr. MacFarland: Is it right for the counsel to be allowed to testify for the witness, merely calling for an answer yes or no?

The MASTER: Ask general questions, calling for the course of business, and let the witness answer in his own language.

225 Q. You have been asked on your cross-examination what business the Mathieson Alkali Works transacted at Providence. I do not recall your answers but I will ask this question: Please state as fully as you can what business was transacted at Providence prior to May 1, 1901, by the Mathieson Alkali Works?

A. The offices of the Mathieson Alkali Works at Providence conducted all the business of the company except that of a purely manufacturing character, which was conducted at Saltville. They kept there the general books of account, the books of record, the stock books. They had charge of the general course of the company's affairs and transacted its finances; collected the money and paid the bills. In fact attended to all the business which generally comes under the conduct of a company's general office. This was done solely at Providence and nowhere else.

Q. Did it sell all its goods in Providence?

A. It sold all of them at Providence.

Q. How many employés did the company have, not including yourself as treasurer and secretary and not including Mr. Arnold, its president, about which you have already testified?

A. There are four clerks in the office.

Q. What are their duties?

A. Two of the clerks attend solely to the matters of accounting—take care of its books; one is a stenographer; and the fourth attends partly to duties in the office and partly to some local sales,

226 chiefly of bicarbonates and of lye.

Q. Are these four employés of the company at Providence engaged in any other occupation?

A. They are not.

Q. They give their entire time to the Mathieson Alkali Works' business at Providence?

A. They do.

Q. Is that true of yourself?

A. That is true of myself.

Q. My question was put to you with reference to time prior to May 1, 1901. Would you make the same answer as to the period since May 1, 1901, up to the present time?

A. Yes.

Q. Has the Mathieson Alkali Works since the sale of the plant at Niagara Falls to the Castner Electrolytic Alkali Company had any office or place of business of any kind in the State of New York?

A. It has not.

Q. Has it had any books of account or any records or any clerks in the State of New York?

A. It has not.

Q. Has the Mathieson Alkali Works had any financial agency of any kind in the State of New York?

A. It has not.

Q. Since that time or before that?

A. Neither before nor since.

Q. Has the Mathieson Alkali Works at any time since you have been the secretary and treasurer of the company had any office, for any purpose whatsoever, or any books or records, at No. 33 Wall street, New York city?

A. They have not.

Q. You were asked in your cross-examination with reference to the plant and property of the Mathieson Alkali Works at
227 Saltville, Virginia. Will you state about how much the investment of the company is at Saltville, Virginia, in round figures of millions of dollars?

Mr. MacFarland: I object to the question as irrelevant and immaterial.

Objection overruled. Exception by Mr. MacFarland.

A. About three and a half to four millions of dollars.

Q. Is it true or not that the entire original capital of the company was invested at Saltville, Virginia?

A. It was.

Same objection by Mr. MacFarland.

Objection overruled. Exception by Mr. MacFarland.

Q. And that no part of it was invested anywhere else?

Same objection by Mr. MacFarland, same ruling and exception.

A. It was not.

Recross-examination by Mr. MacFarland:

Q. Is the testimony which you have given in this case upon my cross-examination true or untrue?

A. It is true.

Mr. MacFarland: I shall not delay the case for the purpose of calling witnesses, but I wish it noted that I have subpœnaed certain persons who have not appeared.

Mr. Ely: I object to this being put upon the record, as of no consequence.

228 The Master: I do not see the propriety of putting it upon the record, unless some motion is made in regard to it.

Testimony closed.

Briefs to be submitted by ten o'clock a. m., Saturday, November 23, 1901.

Last exhibit: Plaintiff's No. 4.
Defendant's No. 2.

(Endorsed:) United States circuit court, southern district of New York.—Jefferson B. Conley *vs.* The Mathieson Alkali Co.—Testimony before master.—U. S. circuit court, southern district of New York, Filed Dec. 20, 1901, John A. Shields, clerk.

229 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

Master's Report.

To the honorable the judges of the said court:

I, the undersigned, a master of this court, to whom by order made and filed herein on the 9th day of August, 1901, it was referred to take testimony and report to the court whether or not at the time of the service of the summons in this action the defendant corporation was doing business within the State of New York, having been attended by counsel for the respective parties and having heard and duly considered the proofs submitted to me touching the matters so in reference as aforesaid, do hereby respectfully report:

The defendant is a corporation duly organized and existing under the laws of the State of Virginia, and since the year 1893 has maintained and operated an extensive plant in Saltville, Virginia, for the manufacture of salt, caustic soda, soda ash and bicarbonate of soda. Prior to December 31st, 1900, said defendant also owned and operated a plant for the manufacture of caustic soda and bleaching powder by electricity, located at Niagara Falls in the State of New York, under a patented process known as the Castner elec-
230 trolytic process.

By an instrument in writing, bearing date the 31st day of December, 1900, and executed by its president on the 24th day of January, 1901, said defendant corporation sold and transferred to a corporation known as the Castner Electrolytic Alkali Company, organized under the laws of the State of Virginia, "all the plants, "rights and property of every kind and description of the Mathie-"son Alkali Works at Niagara Falls in the State of New York, "together with all inventions, patents and patent rights owned and "used by it or in connection with its said works, together with all "trade-marks and the good will of the business as a going concern, "free of all encumbrances, except as to the continuing rents, royal-"ties or charges under any existing leases or agreements." The said property so sold and transferred was more particularly described in the said instrument, and, according to the testimony before me, constituted all the property of the defendaut corporation in the State of New York of every sort or description.

The consideration expressed in said instrument was "the sum of one dollar and other valuable considerations." From the evidence before me it appeared that the substantial consideration consisted of the entire capital stock of the said Castner Electrolytic Alkali Company.

The said instrument was duly delivered, and the physical transfer of the property therein specified was made during the month of January, 1901, and the said instrument was placed on record

in the county of Niagara and State of New York on the 15th
231 day of February, 1901. The actual management of the plant at Niagara Falls has been conducted since the transfer by the same individuals who managed it previously. The products manufactured at Niagara Falls from a date long prior to the transfer were, and still are, disposed of through a corporation known as Arnold Hoffman & Company, organized under the laws of the State of Rhode Island and having its principal office at the city of Providence in that State. With the exception of certain salts and bicarbonates, which are sold directly from Saltville, all of the products of the defendant corporation were during the same period, and still are, disposed of through the medium of said corporation of Arnold Hoffman & Company, which acts as selling agent both for the defendant corporation and said Castner Electrolytic Alkali Company. Said corporation of Arnold Hoffman & Company has a branch office in the city of New York, but the business dealings of the defendant corporation and of the Castner Electrolytic Alkali Company with Arnold Hoffman & Company are carried on through the Providence office of said last-named corporation.

The defendant corporation, since a period prior to the 31st day of December, 1900, had, and still has, its principal office for the transaction of business in the city of Providence at which its records and books of account are kept, and an office force consisting of several employés is engaged. The bank account of said defendant corporation was, during the period in question, and now is, kept in the city of Providence. It has no office within the State of New York, none of its books, records or accounts are kept in this State, nor has it, since January 1st, 1901, sold any of its products here.

232 A by-law of the company adopted in 1896 provided that the directors, in addition to any other meetings that might be held, should hold regular monthly meetings in the offices of the company in the city of New York on the second Wednesday of each and every month in each year. It did not appear, however, that meetings of the directors had been held in accordance with this by-law, the fact being that they were held sometimes in Saltville and sometimes in Providence, and, during the year 1901 at least, were held not more than two or three times in this city and then at the branch office of Arnold Hoffman & Company, the selling agents, or at the office of Messrs. R. T. Wilson & Company, bankers, in Wall street, a member of which firm was a director of the defendant company and one of its principal stockholders.

In support of the claim that the defendant corporation was doing business within the State of New York, reliance was had upon a letter written by the treasurer of the company under date of March 15th, 1901, to one James A. Pell, containing the following language:

"There seems good reason to believe that when all this work is completed the business at Saltville will become satisfactory to the stockholders. In the meantime we have, as you are doubtless aware, been operating the so-called Castner patents in a plant of some two thousand horse-power at Niagara Falls. This has gone on successfully and is today producing highly satisfactory results, in conse-

quence of which we are at the present time about to put up addi tional plant at that point of a capacity equal to twice that already installed, which we anticipate will largely increase the earnings of the company.

"The course of the company's affairs necessitated the raising of funds from an increase of capital and the plan which has met with the approval of a very large majority of the stockholders, is now being carried into effect."

The apparent admissions of this letter are fully explained
233 by the fact that it followed earlier correspondence in which the plan of disposing of the plant at Niagara Falls for the stock of a new company was brought to the attention of Mr. Pell. Under date of August 28th, 1900, the treasurer of the Mathieson Company wrote him as follows:

"Since writing you on July 13th, the plan for separating the Castner plant and patents from the rest of the company has been materially advanced, the bonds of the new company having been brought out and underwritten in England. The arrangement provides, as stated in my letter of July 13th, that the Mathieson Alkali Works shall, in exchange for the present plant and patents, take all of the common stock of the new company. The funds derived from the sale of the new company's bonds are to be applied for the building of additional plant. The Mathieson Alkali Works will then, by virtue of ow-ing the stock, receive all the earnings of the new company after the payment of the interest and sinking fund on the bonds of the new company. This we believe will work out highly to the advantage of the Mathieson Company."

Upon the facts thus outlined, it does not appear that the defendant corporation was, at the time of the service of the summons herein, viz. April 18th, 1901, doing business within this State.

The fact that it held the entire capital stock of the Castner Electrolytic Alkali Company and that the operations of that company were carried on under the same management as before December 31st, 1900, is not material. The new corporation was a separate legal entity, and whatever may have been the motives leading to its creation it can only be regarded as such for the purposes of legal proceedings.

It was that corporation alone which transacted any business in this State, notwithstanding it may have been for all practical purposes merely the instrument of the defendant corporation. (*Peo v. Am. Bell Telephone Co.*, 117 *N. Y.*, 241. *U. S. v. The Same*, 29 *Fed. Rep.*, 17.)

234 All of which is respectfully submitted, the testimony taken before me being filed herewith.

Dated New York, December 9th, 1901.

ARTHUR H. MASTEN,
Master in Chancery, U. S. Circuit Court,
Southern District of New York.

(Endorsed:) United States circuit court, southern district of New York. Jefferson B. Conley, plaintiff, against The Mathieson Alkali

Works, defendant. Master's report. U. S. circuit court, southern district of New York, Filed Dec. 20, 1901, John A. Shields, clerk.

235 United States Circuit Court, Southern District of New York.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.

The plaintiff excepts to the report of Arthur H. Masten, master in this case, dated December 9th, 1901, and to each and every one of the rulings of said master in the admission of evidence contrary to the plaintiff's objections. The plaintiff also excepts to the conclusions of fact of the said master and to each of them.

MACFARLAND, TAYLOR & COSTELLO,
Attorneys for Complainant, #63–65 *Wall Street,*
New York City, Borough of Manhattan.

To John A. Shields, Esq., clerk of the U. S. circuit court, New York city. Messrs. Agar, Ely & Fulton, attorneys for defendant, #31 Nassau street, New York city, borough of Manhattan.

(Endorsed:) United States circuit court, southern district of New York.—Jefferson B. Conley, plaintiff, *vs.* The Mathieson Alkali Works, defendant.—Exceptions to referee's report.—MacFarland, Taylor & Costello, attorneys for plaintiff, 63 Wall St. New York city.—U. S. circuit court, southern district of New York. Filed Dec. 24, 1901, John A. Shields, clerk.

236 At a stated term of the United States circuit court for the southern district of New York, held at the United States court-house in the city of New York, in said district, on the 21st day of January, 1902.

Present: Hon. E. Henry Lacombe, circuit judge.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Defendant.
Order Setting Aside Summons.

This cause having been duly removed from the supreme court of the State of New York, New York county, on the petition of the defendant appearing in said court specially for the purpose of such removal only, and a motion having been made herein by the defendant, appearing in this court specially and for the purpose of such motion only, to set aside the summons in this action and pretended service thereof on the defendant, and such motion having come on regularly to be heard at a stated term of this court;

And thereupon an order having been duly made and entered herein on the 9th day of August, 1901, directing a reference to Arthur H. Masten, Esq., as a master of this court, to take testimony and report to this court whether or not at the time of the alleged service of the summons in this action the defendant corporation Mathieson Alkali Works was doing business within the State of

New York, the said master having duly taken testimony and made his report, finding as a fact that at the time of the alleged service of the summons in this action, the defendant corporation did not have any agent, office or property within the State of New
237 York, and was not doing business within the State of New York, and said report having been duly filed in the office of the clerk of this court on the 20th day of December, 1901;

Now, upon the order of reference duly made and filed herein on the 9th day of August, 1901, and upon the report of the master filed herein on the 20th day of December, 1901, the order to show cause granted herein May 23d, 1901, and the several affidavits upon which said order of reference of August 9th, 1901, was made as in said order recited; and upon the certified record filed herein upon the removal of this cause from the supreme court, and the appearance of the defendant Mathieson Alkali Works herein, specially for the purpose of this motion only, and after hearing Alfred Ely, Esq., of counsel for the defendant in support of the motion, and W. W. MacFarland, Esq., of counsel for the plaintiff in opposition thereto; and the matter having been duly considered;

Ordered:

First. That the report of the master filed herein December 20th, 1901, be and the same hereby is in all respects approved and confirmed:

Second. That the aforesaid motion of the defendant be and the same hereby is in all respects granted, and that the summons in this action and the pretended service thereof on the defendant be and the same hereby is in all respects set aside and declared to be null and void and of no effect, and that the defendant be and it hereby is relieved from appearing to plead in answer to the complaint in this action or otherwise herein.

E. HENRY LACOMBE, *U. S. C. J.*

238 (Endorsed:) U. S. circuit court, southern district of New York. Jefferson B. Conley, plaintiff, against The Mathieson Alkali Works, defendants. Order setting aside summons. Agar, Ely & Fulton, appearing specially only as attorneys for defendant, 31 Nassau St. New York city.—Service of a copy of the within this 24th day of Dec. 1901, hereby admitted. MacFarland, Taylor & Costello. U. S. circuit court, southern district of New York, Filed Jan. 21, 1902, John A. Shields, clerk.

239 United States Supreme Court.

JEFFERSON B. CONLEY, Plaintiff,
against
THE MATHIESON ALKALI WORKS, Respondent.

Assignments of Errors.

Now comes the plaintiff by his counsel, and files the following assignments of error:

I. The court erred in overruling the exceptions to the master's

report herein, and in confirming the same in so far as it was found therein and reported; that the business dealings of the defendant corporation with the corporation of Arnold, Hoffman & Co., are carried on through the Providence office of said last-named corporation.

II. The court erred in overruling the exceptions to said report, and confirming the same in so far as it was therein found and reported that the defendant corporation has no office within the State of New York.

III. The court erred in overruling the exceptions to the said report and in confirming the same in so far as it was therein found and reported; that the defendant corporation has not since January 1st, 1901, sold any of its products within the State of New York.

240 IV. The court erred in overruling the exceptions to the master's report, and in confirming the same in so far as it was therein found and reported that it does not appear that the defendant corporation was, at the time of the service of the summons herein, viz: April 18th, 1901, doing business within the State of New York.

V. The court erred in granting the motion of the defendant to set aside the service of the summons in this action, and declaring such service to be null and void and of no effect.

MACFARLAND, TAYLOR & COSTELLO,
Attorneys for Plaintiff in Error.

(Endorsed:) United States Supreme Court.—Jefferson B. Conley, plaintiff in error, *vs.* The Mathieson Alkali Works, defendant in error.—Assignment of errors.—MacFarland, Taylor & Costello, attorneys for plaintiff, 63 Wall St. New York city.—U. S. circuit court, southern district of New York, Filed Feb. 5, 1902, John A. Shields, clerk.

241 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

JEFFERSON B. CONLEY, Plaintiff in Error,
vs.
THE MATHIESON ALKALI WORKS, Defendant in Error.

Know all men by these presents, that we, Jefferson B. Conley, and the Ætna Indemnity Company, of Hartford, Connecticut, having an office and usual place of business at No. 76 William street, in the city of New York, as surety, are held and firmly bound unto the above-named Mathieson Alkali Works in the sum of two hundred and fifty (250) dollars, to be paid to the said Mathieson Alkali Works, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 31st day of January, in the year of our Lord one thousand nine hundred and two.

Whereas, the above-named Jefferson B. Conley has prosecuted a

writ of error to the United States Supreme Court to reverse the order and decree rendered in the above-entitled suit, by the judge of the circuit court of the United States, for the southern district of New York:

242 Now, therefore, the condition of this obligation is such, that if the above-named Jefferson B. Conley shall prosecute said writ of error to effect and answer all damages and costs, if said plaintiff fail to make his plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JEFFERSON B. CONLEY. [L. S.]
THE ÆTNA INDEMNITY COMPANY,
By WYLLYS BENEDICT, *Assistant Secretary.*
Attest: [SEAL.] BEEKMAN HUNT, *Attorney-in-fact.*

Sealed and delivered, and taken and acknowledged, this 4 day of February, 1902, before me.

WILLARD U. TAYLOR,
[SEAL.] *Notary Public, New York Co.*

243 *Affidavit, Acknowledgment, and Justification by the Ætna Indemnity Company.*

UNITED STATES OF AMERICA,
Southern District of New York,
State and County of New York, } *ss:*

Before me personally came Wyllys Benedict, known to me to be the assistant secretary of the Ætna Indemnity Company, the corporation described in and which executed the annexed bond of Jefferson B. Conley as surety thereon, who being by me duly sworn, deposes and says that he resides in city of New York, State of New York, and that he is the assistant secretary of the Ætna Indemnity Company, and knows the corporate seal thereof; that said company is duly and legally incorporated under the laws of the State of Connecticut; that said company has complied with the provisions of the act of Congress of August, 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond is the corporate seal of the Ætna Indemnity Company, and was thereto affixed by order and authority of the board of directors of said company; and that he signed his name thereto by like order and authority as assistant secretary of said company; and that he is acquainted with Beekman Hunt, and knows him to be the attorney-in-fact of said company; and that the signature of said Beekman Hunt subscribed to said bond is in the genuine handwriting of said Beekman Hunt, and was thereto subscribed by order and authority of said board of directors, and in the presence of said deponent; and that the assets of said company, unincumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of three hundred thousand dollars ($300,000).

WYLLYS BENEDICT.

Sworn to, acknowledged before me, and subscribed in my presence this 31st day of January, 1902.

WALTER J. MOORE,
[L. S.] *Notary Public, New York County.*

(Endorsed:) U. S. circuit court, southern district of New York. Jefferson B. Conley, plaintiff in error *vs.* The Mathieson Al-
244 kali Works, defendant in error.—Bond for damages and costs.—Approved as to form and also as to sufficiency of sureties, with reservation, however, to the defendant in error of the right at any time to examine the proper officers of the surety company, under oath, touching its assets, liabilities and financial condition generally. E. H. Lacombe, U. S. circuit judge. U. S. circuit court, southern district of New York, Filed Feb. 5, 1902. John A. Shields, clerk.

245 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To The Mathieson Alkali Works, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden at the *in the* city of Washington, in the District of Columbia, on the 27th day of February, 1902, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Jefferson B. Conley, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the errors in said writ mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this fifth day of February, in the year of our Lord one thousand nine hundred and two, and of the Independence of these United States the one hundred and twenty-sixth.

E. H. LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

246 [Endorsed:] E. & A. B. 1908. United States circuit court of appeals for the second circuit. Jefferson B. Conley, plaintiff in error, *vs.* The Mathieson Alkali Works, defendant in error. Citation. Copy received this Feb'y 5, 1901. Agar, Ely & Fulton appearing specially only for def't. U. S. circuit court southern district New York. Filed Feb. 5 1902 John A. Shields, clerk.

247 [Endorsed:] United States Supreme Court. Jefferson B. Conley, pl'ff in error, *vs.* The Mathieson Alkali Works, def't in error. Return to writ of error.

Endorsed on cover: File No. 18,400. S. New York C. C. U. S. Term No. 238. Jefferson B. Conley, plaintiff in error, *vs.* The Mathieson Alkali Works. Filed February 14th, 1902.

Supreme Court of the United States.

JEFFERSON P. CONLEY,
Plaintiff in Error,

AGAINST

THE MATHIESON ALKALI WORKS

BRIEF ON BEHALF OF THE PLAINTIFF IN ERROR.

Statement of the Case.

This is a writ of error to the Circuit Court for the Southern District of New York. The writ was allowed for the purpose of reviewing the question of jurisdiction, which was the only question in the case (fol. 3).

The action was brought in the Supreme Court of the State of New York in March, 1901 (fol. 25).

It is founded upon a contract, made between the defendant corporation, and T. T. Mathieson, which contract was subsequently assigned to the plaintiff in error (pp. 9–14). *The contract was made in the City of New York* (fol. 18). A fact that will have significance later on.

The plaintiff is a citizen of the State of New York. The defendant is a corporation of the State of Virginia.

The plaintiff appeared in the State court for the purpose of removing the cause on the ground of

diverse citizenship (fol. 7). The cause having been removed, the defendant then made a motion in the Circuit Court to set aside the service of the summons, on the ground that the service had not been such as to give the Circuit Court jurisdiction of the defendant (fol. 27).

The motion was supported and opposed by affidavits, to which further reference will presently be made. There was an order of reference to "determine the question of fact, whether the defendant was doing business in this State" (fol. 103).

Testimony was taken (p. 56 *et. seq.*).

There was a report to which the plaintiff excepted (p. 122). The report was accepted, and an order was entered setting aside the service of the summons (fol. 236).

The Court rendered no opinion. The facts upon which decision must turn, will not be found in the Master's report, which presents merely his own conclusion from undisclosed facts, but they will be found in the record. There is no conflict in the evi-evidence.

THE RELEVANT FACTS ARE AS FOLLOWS:

I.—The question turns upon whether the State court had jurisdiction of the action, and of the defendant at the time of the removal, for if it had, the defendant could not after removal object to the sufficiency of the service of process.

Cowley *v.* N. P., 152 U. S., 583.
Empire Min. Co. *v.* Propeller Co., 108 F. R., 900.

II.—The jurisdiction of the State Court in actions against foreign corporations is governed by the following sections of the Code of Civil Procedure:

"SECTION 432. Personal service of a summons upon a defendant, being a foreign cor-

poration, must be made by delivering a copy thereof, within the State, as follows:

1. To the president, treasurer or secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions, under another name.

2. To a person designated for the purpose by a writing, under the seal of the corporation and the signature of its president, vice-president or other acting head, accompanied with the written consent of the person designated, and filed in the office of the Secretary of State. The designation must specify a place within the State as the office or residence of the person designated; and, if it is within a city, the street and the street number, if any, or other suitable designation of the particular locality. It remains in force until the filing in the same office of a written revocation thereof, or of the consent executed in like manner; but the person designated may, from time to time, change the place specified as his office or residence to some other place within the State by a writing executed by him and filed in like manner. The Secretary of State may require the execution of any instrument specified in this section to be authenticated as he deems proper, and he may refuse to file it without such an authentication. An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, it is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

3. If such a designation is not in force, or if neither the person designated nor an officer specified in subdivision first of this section can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein, to the cashier, a director or a managing agent of the corporation within the State."

"SECTION 1780. An action against a foreign corporation may be maintained by a resident of the State or by a domestic corporation for any cause of action. An action against a foreign corporation may be maintained by another

foreign corporation or by a non-resident, in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract, made within the State or relating to property situated within the State, at the time of the making thereof."

2. " Where it is brought to recover real property situated within the State.

3. " *Where the cause of action arose within the State*, except where the object of the action is to affect the title to real property situated without the State."

The last quoted section defines the cases in which actions may be brought against foreign corporations. Such an action may be brought by a citizen of the State for *any cause of action*. The plaintiff, Conley, is a citizen of the State, and moreover, the contract was made within the State. The right to sue was then perfect.

Next as to the service of process under Section 432. Neither of the officers mentioned in Subivision 1, could be found. The defendant had neglected to designate a person on whom process might be served, as required by a statute of the State (fol. 81) and, therefore, service could not be made under Subdivision 2. Service was made under Subdivision 3 upon " directors within the State," not temporarily within the State, in fact, resident directors (fols. 86–88).

Wilson and Agar (the persons served), admit that they were directors (fols. 43–46), and residents of New York City (p. 35).

From first to last, there has not been any suggestion either in proof of argument or decision, that the State court had not complete jurisdiction in the premises.

III.—It has never been decided by any Federal court, that, in addition to such a state of facts, the foreign corporation must be actually carrying on

business in the State where service is made, on the contrary, directly the reverse has been held by this Court, and other courts, as will be seen later on. But, if anything depended upon the fact of the defendants doing business in the State, then the following facts show that it was doing business there—was really domiciled there in the most accentuated legal sense.

1. The business of corporations is conducted by its Board of Directors, where they meet and act, the corporation is, in effect, domiciled.

"Directors of a corporation are its principal officers and agents" (Hiller *v.* B. & M. R. Co., 70 N. Y., 226).

A by-law of this corporation provides as follows:

> "The directors, in addition to any other meetings that may be held, shall hold regular monthly meetings at the office of the company in the City of New York, at 12 o'clock noon, on the second Wednesday of each and every month in each year.
>
> "Special meetings of the board may be called at any time by the president when deemed necessary, and shall be called by the president or secretary at any time upon the written request of any three directors.
>
> "At all meetings a majority of the board shall constitute a quorum for the transaction of business" (p. 27).

Under this by-law the directors have carried on the business of the company in the City of New York (p. 73 *et seq.*).

There is no definite evidence of any meetings of the board elsewhere (pp. 70, 71 *et seq.*).

2. From the return of the Sheriff (pp. 44, 45) and the affidavit of Taylor (pp. 48, 49) it appears that

the defendant company, by the usual business signs, announced itself as located at No. 31 Pine Street, New York City, where, among other things, they maintained an office devoted to directors' meetings (fol. 92). Letterheads give the defendant's location and place of busines as "31 & 33 Pine Street, New York" (fols. 89, 90).

3. Elections for officers are held there, and, at the date of the examination, Edwards, whose office is there with R. T. Wilson & Co. (pp. 35, 30–92) was president of the defendant company (p. 72); Edwards and most of the other directors are citizens of the State of New York (p. 35).

4. Extensive financial business is transacted there, through the banking house of R. T. Wilson & Co. (p. 82). Wilson owns over four million ($4,000,000) dollars of the capital stock of the company, of which he appears to have been the promoter (101), and it is sufficiently obvious that the defendant company is merely an appendage of his office.

5. All the products of the defendant are sold through selling agents (fol. 130), Arnold, Hoffmann & Co., of New York (fols. 190, 191; pp. 66, 67). The president of the Alkali Company being also the head of that concern (pp. 77, 68, 75).

6. In 1896, the defendant company established an extensive manufacturing plant at Niagara Falls in the State of New York, and maintained it until December 31, 1900, when it was nominally conveyed to another corporation organized uner the laws of Virginia, by the managers of the defendant company (pp. 35, 64, 67).

The officers of both companies are practically the same (pp. 35, 92, 93).

7. *The Mathieson Company owns all the stock of the Castner Company* (pp. 59, 93, fol. 180).

And through the ownership of the entire capital stock, the defendant owns and operates the Niagara plant just as it did before. The title to the property still exists, it has merely *changed form*, and is now represented by capital stock.

8. The directors of the defendant company hold a majority of the stock in the Mathieson company (fol. 195).

9. It follows from the fact that the defendant company created the Castner Company, and owns all its capital stock, and the fact that the two companies are governed by the same people, and at the same place in New York City, that their interests are identical, and that the defendant company is still, in effect, as much as ever the owners and operators of the Niagara plant.

10. Saltville is a small village in a remote part of Virginia, built and entirely owned by the defendant, and is merely a manufacturing plant (fols. 126, 128). The management of this plant is the only business of the company carried on in Virginia, the legal home of the defendant company. There is a factory there, and employees to operate it, and that is the sole practical relation the corporation has to the State of Virginia.

11. To Providence, R. I., the defendant sustains no sort of legal relation. In point of fact, it happened to be the residence of its one time president, Arnold, now succeeded by a resident of New York, and also the residence of Gladding, secretary of the company, from whose testimony the above recited facts in regard to the defendant's relation to the State and City of New York are taken.

12. The Master's Report is meagre and extremely incorrect. This may be verified by the reference to the record above given. Of this, one illustration

will suffice. Under the order of reference, the real seat of government of the corporation became a subject of inquiry, and that involved the question as to where the Board of Directors resided, met and exercised their functions.

On that point the Master's Report is as follows:

> "A by-law of the company adopted in 1896 provided that the directors, in addition to any other meetings that might be held, should hold regular monthly meetings in the offices of the company in the City of New York on the second Wednesday of each and every month in each year. It did not appear, however, that meetings of the directors had been held in accordance with this by-law, the fact being that they were held sometimes in Saltville and sometimes in Providence, and, during the year 1901 at least, were held not more than two or three times in this city, and then at the branch office of Arnold, Hoffman & Company, the selling agents, or at the office of Messrs. R. T. Wilson & Company, bankers, in Wall street, a member of which firm was a director of the defendant company and one of its principal stockholders."

The only evidence on the point is the testimony of Gladding, which is as follows:

> "Q. Where are the meetings of the directors of this corporation held?
>
> "A. They have been held at various places at different times.
>
> "Q. At what places?
>
> "A. In Providence, in Saltville; sometimes in New York.
>
> "Q. We will take Saltville first. When was the first directors' meeting held there?
>
> "A. I can't remember.
>
> "Q. You do not even know that?
>
> "A. I can't remember.
>
> "Q. And you are secretary of the company?
>
> "A. Yes.
>
> "Q. Have you been notified to produce the minutes of the directors' meetings?
>
> "A. I have not.

"Q. Have you been notified not to produce them?

"A. I have not.

"Q. Will you produce them?

"The Witness: Do you now mean now or when?

"Mr. Macfarland: At the next hearing. Are they here?

"The Witness: They are not here.

"Q. They are in Providence?

"A. Yes, sir.

"Q. Will you produce them at the next hearing?

"A. I would have to do that under the direction of my Board of Directors.

"Q. You will not answer?

"Mr. Ely: You have had your answer.

"Q. When was the first directors' meeting held in Providence?

"A. I don't know.

"Q. How many have been held here?

"A. I don't know.

"Q. Will you swear that one was ever held at Saltville?

"A. Yes, sir.

"Q. In what year?

"A. I don't remember the year.

"Q. Will you swear that two have been held there?

"A. I can't swear as to two. I remember one.

"Q. And you do not even know the year?

"A. I don't know.

"Q. Can't you get within four or five years of it?

"A. Yes, sir.

"Q. What year do you think it was in?

"A. Oh, I should think about four years ago.

"Q. When was your last directors' meeting in Providence?

"A. I don't remember that.

"Q. You do not remember that?

"A. No.

"Q. Have your directors' meetings all been held in New York, with the exception of those that you can remember in Saltville and Providence?

"A. I don't know, because much of the

history of the company is not of my personal knowledge at all.

" Q. You are keeper of the directors' meetings, are you not?

" A. Yes, sir; but I don't always read them for years, before I became an officer.

" Q. Since you became an officer have not the directors' meetings been held in this city?

" A. Have there been directors' meetings held in this city? Yes, sir.

" Q. Have they not all been held here?

" A. No.

" Q. What directors' meetings have been held elsewhere?

" A. I referred to one, in Saltville.

" Q. With the exception of the one in Saltville, have they all been held here?

" A. I am not sure.

" Q. Do you know of any that have been held anywhere else, that you can tell us about?

" A. I think there have been one or two held in Providence. I will not make that as an assertion.

" Q. But you want to be certain?

" A. I won't be certain.

" Q. And you can't tell when?

" A. No.

" Q. When was the last directors' meeting held here?

" A. It was held in October.

" Q. In the present year, October?

" A. Yes, sir.

" Q. Where?

" Mr. Ely: I object to that as since the period covered by the examination.

" The Master: I will allow it and give an exception.

" Exception by Mr. Ely.

" Mr. Ely: I object to any examination which is subsequent to the date at issue in this reference, April 18.

" Mr. Macfarland: Go on, sir.

" The Witness: Where shall I go on.

" Q. Where was that meeting held?

" A. At the office of R. T. Wilson.

" Q. In this city?

" A. Yes, sir.

"Q. Mr. R. T. Wilson is one of the directors, is he not?
"A. Yes, sir.
"Q. All these meetings that have been held in New York have been held at his office, have they not?
"A. No.
"Q. Where else have they been held?
"A. They have been held in the office of Arnold, Hoffman & Company.
"Q. How many have been held there?
"A. I can't say how many.
"Q. When?
"The Witness: When have they been "held?
"Mr. Macfarland: Yes.
"A. At various periods.
"Q. At Arnold, Hoffman & Company's?
"A. Yes, sir.
"Q. But how many times or when you "cannot tell?
"A. I cannot. Arnold, Hoffman & Company's place of business is in the City of New York.

13. Now, there is a presumption that the by-laws have been observed, and that monthly meetings have been regularly called in the City of New York, even if not always attended, and there is not a scintilla of evidence to the contrary. In the next place, there is not a scrap of evidence that a meeting of the board was ever held elsewhere, except one, on some unknown occasion at Saltville.

Of course, the minute books of the board would have shown where meetings were held, but these the defendant refused to produce (pp. 70–75), and this leads to a conclusive presumption, that they were held in the City of New York in pursuance of the by-laws, and not anywhere else, and such is, in fact, the undisputed evidence.

Everything is presumed against those who do not produce books that would show the fact.

Lindley on Partnership, pp. 808, Note; 993.

Assignments of Errors.

I.—The Court erred in overruling the exceptions to the Master's report herein, and in confirming the same in so far as it was found therein and reported; that the business dealings of the defendant corporation with the corporation of Arnold, Hoffman & Co., are carried on through the Providence office of said last named corporation.

II.—The Court erred in overruling the exceptions to said report and confirming the same in so far as it was therein found and reported that the defendant corporation has no office within the State of New York.

III.—The Court erred in overruling the exceptions to the said report and in confirming the same in so far as it was therein found and reported; that the defendant corporation has not since January 1, 1901, sold any of its products within the State of New York.

IV.—The Court erred in overruling the exception to the Master's report, and in confirming the same in so far as it was therein found and reported that it does not appear that the defendant corporation was, at the time of the service of the summons herein, viz., April 18, 1901, doing business within the State of New York.

V.—The Court erred in granting the motion of the defendant to set aside the service of the summons in this action, and declaring such service to be null and void, and of no effect."

Argument.

I.—THIS CAUSE WAS DECIDED BELOW UPON THE ASSUMED AUTHORITY OF GOLDEY *v.* THE MORNING NEWS, 156 U. S., 518.

That case was decided below by the same Judge who granted the motion to dismiss in the present case (42 F. R., 112).

But there is no resemblance, nor the remotest analogy, between the two cases. Goldey *v. The Morning News* was an action for libel against a New Haven printing corporation. The corporation sustained no relation whatever to the State, nor did the cause of action arise therein. Service of process was made upon the president of the foreign corporation, who was temporarily within the State, but who was a citizen and resident of the State of Connecticut. This Court held that the temporary presence within this State of a person who happened to be president of the corporation did not make him sufficiently representative of the corporation as to make the service valid for the purpose of bringing the corporation into court.

The Court said:

> "It is an elementary principle of jurisprudence that a court of justice cannot acquire jurisdiction over the person of one who has *no residence* within its territorial jurisdiction except by actual service of notice within the jurisdiction upon him or upon some one authorized to accept service in his behalf, or by his waiver, by general appearance or otherwise, of the want of due service. Whatever effect a constructive service may be allowed in the courts of the same government, it cannot be recognized as valid by the courts of any other government."

Further:

> "So a judgment rendered in a court of one State against a corporation neither incorporated nor doing business within the State must be regarded as of no validity in the courts of another State, or of the United States, unless service of process was made in the first State upon an agent appointed to act there for the corporation, and not merely upon an officer or agent residing in another State, and only casually within the State, and not charged with any business of the corporation there."

We have in these paragraphs a precise definition of the case in which service of process will not be regarded by this Court as sufficient to give jurisdiction over the foreign corporation for the purpose of rendering a valid personal judgment. It amounts to this, that where the cause of action against the foreign corporation did not arise within the State, and the corporation was not doing any business within the State, service of process upon an officer or agent only casually within the State, and not charged with any business of the corporation there, is not sufficient.

In all the decisions of the Circuit Court, cited in the opinion against the validity of the service, precisely the same rule is so stated and limited. Thus in Fidelity Trust, &c., Company *v.* Mobile S. T. Ry. Co., it is said, that

> "When a non-resident corporation is not doing business in the jurisdiction, service on the president temporarily present in the district is not effective in Alabama" (F. R., 53, p. 850).

And in Reifsnider *v.* American, &c., Co. (E. D, Missouri), 45 F. R., 433, it is said:

> "No jurisdiction of a foreign corporation which does not maintain an office or transact any business within the State is acquired by service of process on the president thereof, when he is within the State *casually on private business.*"

Carpenter *v.* Westinghouse Company (S. D., Iowa), 32 F. R., 434, is exactly to the same effect.

The same is true of United States *v.* American Bell Telephone Company, 29 F. R., 17.

And also Elgin Canning Company *v.* Atchison, T. & S. F. Ry. Company, 24 F. R., 866.

The Wooden Ware Company *v.* Stem, 63 F. R., 676.

Also Clews *v.* Woodstock Iron Company, 44 F. R., 31.

Goldey *v. Morning News*, 42 F. R., 103.

It is to be noted, that in every one of these cases we have these facts; that the foreign corporation sustained no business relation whatever to the State in which service was made. That the person served was in the State "*casually on private business,*" and that *the cause of action did not arise within the State.* The wildest imagination cannot bring the facts of the present case into any sort of legal relation to the class of cases above mentioned. This is plain enough from a brief recapitulation of a few of the facts mentioned in the statement of the case. The contract was made there; the by-laws of the foreign corporation located it there for all executive business; there the seat of government is established; there the directors meet and act.

As the Court of Appeals says in Hiller *v.* B. & M. Ry. Company, 70 N. Y., 226:

> "Directors of a corporation are its principal officers and agents."

The directors of this corporation who were served with process, were not casually within the State, they were permanent residents, and by the fundamental laws of the corporation, they were obliged to perform their official functions there.

Moreover, the company owns and operates an extensive manufacturing plant within the State of New York, although the nominal legal title to the property is in a subsidiary corporation of its own creation.

In short, a reference to the undisputed facts set forth in the statement of the case, shows very conclusively the intimate business relations of this corporation to the State of New York, where it has always had its real domicile, and conducted all its operations governmental and financial.

It is palpably plain that the line of decisions upon which the decision below was based, are wholly irrelevant. Not one of them has the remotest relation to the state of facts existing in this case. It would be

interesting to know upon what line of reasoning the decision below proceeded, but there was no opinion. Having regard to the practical administration of justice and to settled principles, it would appear to be extremely absurd that a corporation thus situated may make a contract in the State of New York to-day, and to-morrow, in an action in a court of that State founded upon that contract, deny the jurisdiction of the court on the ground that service upon two *resident* directors was not legally efficient to give the court jurisdiction, notwithstanding the statutes of the State expressly declare that it shall be sufficient. It is needless to say that no decision of any Federal or State court affords any support for such a conclusion.

II.—THE WHOLE COURSE OF DECISION, BOTH FEDERAL AND STATE, SUSTAINS THE VALIDITY OF THE SERVICE IN THE PRESENT CASE.

It is true that the construction of a State statute is not always and necessarily binding upon a Federal court. This Court says so in Goldey *v. Morning News, supra.*

See also Tootle *v.* Coleman, 107 F. R., p. 45.

Still, it remains that the decisions of the highest court of a State in respect to the meaning of a State statute should be and they are treated with the greatest respect. It will, therefore, be convenient to refer to those decisions in the first instance. In Tuchband *v.* C. & A. R. R. Co. (115 N. Y., 437), it was held that service upon an agent in charge of a railroad ticket office in the City of New York was sufficient, although the cause of action did not arise within the State, as in the case at bar it did (115 N. Y., 437).

Hiller *vs.* B. & M. R. R , Co. 70 N. Y., p. 223:

This was an action upon a contract for services made in the City of New York. Service of the sum-

mons was made upon a director of the foreign corporation, while he was *temporarily* in this State upon his own business. The defendant had no property in the State. The service was held to be good. The Court says:

> "As a general rule any service will be deemed sufficient which renders it reasonably probable that the party proceeded against will be apprised of the action against him and have an opportunity to defend, and so long as this general rule is not violated by a mode of service prescribed by the Legislature, no constitutional right of the party served is invaded."

This proposition of the head note is stated more at large in the opinion in the following words:

> "Corporations are intangible, incorporeal existences, and service of process upon them can only be made by service upon some one of their agents or officers. The Legislature has power to determine how and upon whom service shall be made. It may determine that service shall be made upon the Board of Directors while in session, or upon any of the executive or administrative officers, directors, or other agents. The object of all service of process is said to be to give notice to the party on whom service is made, that he may be aware of and may resist what it sought of him, and it is a general rule that any service must be deemed sufficient which renders it reasonably probable that the party proceeded against will be apprised of what is going on against him, and have an opportunity to defend (*In re* Empire City Bank, 16 N. Y., 200; Happy *vs.* Mosher, 48 N. Y., 313; Gibbs *vs.* Queens Ins. Co., *supra*). Hence the Legislature of this State has designated the agents of corporations upon whom process may be served. And provisions have been made for the service of process upon natural persons by posting and publication; and notices and citations affecting personal and property rights and interests are authorized in certain cases to be made by publi-

> cation or by mail, or by leaving the notice or citation at the parties' place of residence or office. All these various forms of service have been sanctioned by the Legislature and the courts, *and are absolutely necessary in the administration of justice.* So long as the general rule above laid down as to service is not violated, no party can complain that any constitutional right has been invaded. But where a service is authorized by the Legislature which is not according to the circumstances of the case, to reach the party intended to be affected, and to give him an opportunity to defend, it may be challenged as a violation of the constitutional provision, that no person shall be deprived of his personal rights or property without due process of law, and so long as a party has the benefit and protection of due process of law, as defined by the Courts, he cannot complain that any constitutional right has been invaded."
>
> Pope *v.* Terre Haute Car Manuf. Co., 87 N. Y., p. 139.

The plaintiffs were residents of the State. It does not appear that the contract sued upon was made within the State.

The material facts are stated in the opinion in the following words:

> "It appears that the defendant, being a foreign corporation, had no place of business, and transacted no business, and had no property within this State, and that at the time its president was served he was temporarily within this State for purposes of his own, on his way to a seaside resort, and not in his official capacity or upon any business of the defendant. The claim is, therefore, made that he in no way represented the defendant, and that service upon him could not bind the defendant."

The service was held to be legally good, and the reasons for this conclusion are stated at large in the opinion.

This Court was of opinion that the above decisions of the Court of Appeals would have sustained the validity of the service in the Goldey case. Whether that be so or not (and perhaps there is reason for doubt), it is entirely plain that the facts in the present case do not, as above shown, sustain the slightest relation to the facts in the Goldey case. At the same time, it is entirely plain, that the Court of Appeals would have affirmed the validity of the service in the present case.

III.—AND NOW IT IS PROPOSED TO DEMONSTRATE THAT EVERY DECISION OF THE FEDERAL COURTS UPON ANY STATE OF FACTS AT ALL RESEMBLING THE FACTS OF THE CASE AT BAR, HAS AFFIRMED THE VALIDITY OF SUCH A SERVICE AS WAS MADE IN THE PRESENT CASE.

(1.) Simon *v.* Craft, 182 U. S., p. 427. In that case, which involved a like question as to the sufficiency of the service of process, this Court said (p. 436):

> "The essential elements of due process of law are notice and opportunity to defend. In determining whether such rights were denied we are governed by the substance of things and not by mere form."
>
> Citing Louisville & Nashville Railroad Co. *v.* Schmidt, 177 U. S., 230.

Applying that rule to the facts, there certainly can be no doubt as to the sufficiency of the service in the present case.

The plaintiff is a citizen of the State; the contract was made therein under the protection of its laws by which its construction and effect are determined. Service was made on resident directors perpetually employed there in the exercise of their functions, as the chief agents of the company. These factors alone bring the case expressly within the terms of the State statute, and more than fulfill its requirements, and it is plain to sense, that they fulfill all

the conditions of the above rule laid down by this Court. Stopping here it may positively be affirmed, that no decision of this Court, or any other has, on *such* a state of facts pronounced the service insufficient to give jurisdiction.

But there is no occasion to stop here, other facts accentuate the legal presence within the State; it is enough to recall but one, the radical fact, that by its by-laws, the corporation elects to establish its business domicile in the City of New York. *In fact it has no other.* Ejected from New York, it would be homeless. Of course, it is absurd to say, that the business of the board, which, by the by-laws, calls for a meeting once a month, could be carried on at their remote Virginia hamlet, the seat merely of one of its factories. It is equally ridiculous to suppose, that the directors could travel off once a month to the residence (whether Providence or San Francisco) of a president or secretary, both of whom are merely its own creatures and temporary agents, subject to its directions in all things. Even they hold their office by appointment in the City of New York, and, as we have seen, there is no record, nor any evidence of any meeting of the board elsewhere than in the City of New York. The concealment and denial of the minute books is a confession, that no meetings were held elsewhere, and that the by-laws were obeyed.

Where, then, does the defendant corporation dwell, if not in the City of New York, its elected domicile? Where else is a creditor to "*find*" it, for the purpose of enforcing a contract made in that city? To send the creditor elsewhere would be a mockery of justice, and a practical denial of any remedy. In many of the decisions cited in this brief such evil consequences of refusing jurisdiction have been pointed out and condemned.

Now, in view of all this, can it be said, that this corporation is not doing business in the State *within the true meaning of the decisions?*

But to return now to the authorities:

(2.) Barrow Steamship Company *v.* Kane, 170 U. S., 100.

In that case the Court held that the Circuit Court of the United States has jurisdiction in an action brought by a citizen and resident of another State against a foreign corporation doing business in the the first State, through its regularly appointed agents upon whom the summons is there served, for a cause of action arising in a foreign country.

Many observations in the opinion are relevant to the case at bar.

On behalf of the steamship company it was argued (p. 105):

> "That the jurisdiction of the courts of the United States held within the State depended on the authority given by those statutes; that the statutes of New York conferred no authority upon any court to issue process against a foreign corporation in an action by a non-resident, *and for a cause not arising within the State;* and therefore that the Circuit Court acquired no jurisdiction of this action brought against a British corporation by a citizen and resident of New Jersey.
>
> "The constant tendency of judicial decisions in modern times has been in the direction of putting corporations upon the same footing as natural persons in regard to the jurisdiction of suits by or against them."

Further (p. 107):

> "The manifest injustice which would ensue, if a foreign corporation, permitted by a State to do business therein, and to bring suits in its courts, could not be sued in those courts, and thus, while allowed the benefits, be exempt from the burdens of the laws of the State, has induced many States to provide by statute that a foreign corporation *making contracts within the State* shall appoint an agent residing therein, upon whom process may be served in actions upon such contracts and so on."

It will be observed that here and elsewhere much stress is laid upon the place where the contract was made, and upon the fact of its being made within the jurisdiction in which the action is brought.

Again the Court says (p. 109):

> "Mr. Justice Swayne, in delivering judgment, said: 'If the theory maintained by the counsel for the plaintiff in error be correct, however large or small the cause of action, and whether it were a proper one for legal or equitable cognizance, there could be no legal redress short of the seat of the company in another State. In many instances the cost of the remedy would have largely exceeded the value of its fruits. In suits local in their character, both at law and in equity, there could be no relief. The result would be, to a large extent, immunity from all legal responsibility. It is not to be supposed that Congress intended that the important powers and privileges granted should be followed by such results. But turning our attention from this view of the subject, and looking at the statute alone, and reading it by its own light, we entertain no doubt that it made the company liable to suit, where this suit was brought, in all respects as if it had been an independent corporation of the same locality'" (12 Wall., 83, 84).
>
> "In that case, it is to be observed, the cause of action arose, neither in the State of Maryland, where the defendant was incorporated, nor in the District of Columbia, where the action was brought, but in the State of Virginia. The decision, in principle and in effect, recognizes that a corporation of one State, lawfully doing business in another State, and summoned in an action in the latter State by service upon its principal officer therein, is subject to the jurisdiction of the court in which the action is brought."

(3.) Connecticut Mutual Life Insurance Company *v.* Spratley, 172 U. S., p. 602, the head note is as follows:

> "In a suit in a court against a foreign corporation where no property of the corpora-

tion is within the State, and the judgment sought is a personal one, it is material to ascertain whether the corporation is doing business within the State; and, if so, the service of process must be upon some agent in the State so far representing it that he may properly be held in law its agent to receive such process in its behalf."

"A foreign insurance company which has been doing business within the State through its agents does not cease to do business therein when it withdraws its agent and ceases to obtain or ask for new risks or obtain new policies, while, at the same time, its old policies continue in force and the premiums thereon are paid by the policyholders to an agent residing in another State, who was once the agent in the State where the policyholders reside."

The decision would appear to be decisive of the present case. The company had made a contract of insurance in the State through an agent and afterwards withdrew its business, but here not only was the contract made within the State, the corporation actually *lives there*, and from thence carries on all its business everywhere, including its extensive factory at Niagara Falls, which it owns and operates under another name as we have seen.

The statutes of the State of Tennessee in respect to the service of process in such cases was substantially like the statute of New York.

A policyholder having died after the company had withdrawn its business from the State, it sent an agent to Memphis to investigate and adjust the claim. This Court held that service of process upon that agent was sufficient, and by a course of reasoning distinctly applicable to the case at bar. Again, stress is laid upon the fact that the contract was made in the State of Tennessee. At the same time the Court will not fail to notice that the facts of the present case are infinitely stronger in favor of the process than those in the case cited.

(4.) Henrietta Mining and Milling Company *v.* Johnson, 173 U. S., p. 221, and

Societe Fonciere et Agricole des Etats Unis *v.* Milliken, 135 U. S., p. 304, are to the same effect. In both the Court finds the rule of decision in the proper construction of the State statute.

(5.) It is needless to add, that, if a State statute does not deny to the defendant due process of law, it is binding upon the Federal Court.

In Cowley *v.* Northern Pacific Railroad Co., 159 U. S., p. 583. This Court said:

> "The case having been removed to the Circuit Court upon petition of defendant, it does not lie in its mouth to claim that such Court had no jurisdiction of the case, unless the Court from which it was removed had no jurisdiction."

In Tootle *et al. v.* Coleman *et al.*, Fed. Rep. 107, p. 41. It is said (referring to the validity of the service of process):

> "It follows from this conclusion that if the State Court obtained sufficient jurisdiction of the subject of this action * * * It does not lie in the mouth of one who has removed a case from the State to the Federal Court to claim that the latter has no jurisdiction of the case, except upon the ground that the Court *from* which it was removed was without jurisdiction."

Similarly in Purdy *v.* Wallace, Muller & Co., Limited, Fed. Rep. 81, p. 513. It is said:

> "When a suit commenced in the State Court by attachment is removed into a Federal Court before the proceedings upon the attachment are completed the fact that the Federal Court cannot complete such proceedings is not a reason for dismissing the action. * * * It is obviously not the purpose of the removal statutes to destroy a valid jurisdiction of the State Court" (p. 515).

(6.) All that has gone before, and all that follows, brings the case at bar distinctly within the principle above laid down.

Reilly *v.* Philadelphia & R. Ry. Co., 109 F. R., p. 349 (District Court, S. D., New York):

> "Under Code Civ. Pro., Section 432, providing that personal service of summons on a foreign corporation may be made, in the absence of the president, treasurer, or secretary, or any person designated by the corporation for that purpose, on 'the cashier, a director or a managing agent within the state,' provided the corporation has property within the state or the cause of action arose there, which provisions are applicable to suits in the Federal courts where the corporation does business in the state, and thereby impliedly assents to the conditions imposed by the statute, service of monition in a suit in admiralty in a district of New York for breach of a contract made in that state on a director of a foreign corporation found within the district, is a sufficient service on the corporation, where it has property within the state; and a leasehold interest in vessels within the state under a lease for the term of 49 years constitutes property, within the meaning of the statute."

In this case the authorities are reviewed at length. Golday *v. Morning News* is distinguished. It will again be noticed that in every feature the present case is much the stronger in favor of the jurisdiction. The case was not necessarily turned upon the possession by the defendant's company of property within this State; there are other controlling facts. But, if it did, is it not obvious that the continued ownership and operation of the manufacturing establishment at Niagara Falls, through the ownership of the entire capital stock of the subsidiary and dependent corporation created in a process of reorganization, is a much more substantial property interest than in a mere leasehold in some steamships?

To illustrate: Suppose the defendant company owned the entire capital stock of the New York Central Railroad and governed and operated the great corporation, would not the defendant company be doing business in the State of New York within any common sense construction of the statute?

(7.) *In re* Horst, 150 U. S., p. 653, it was held:

> " That a service upon the financial agent
> " of the corporation in the district, wherein
> " the corporation transacted chiefly its mon-
> " etary and financial business for this coun-
> " try, was a sufficient service upon the cor-
> " poration."

(8.) Meyer *vs.* Pennsylvania, &c., Company, 108 F. R., p. 169 (Circuit Court, W. D., New York):

> " The director has his permanent residence
> " at Rome, in this State. The cause of action
> " arose within the State. Moreover, I am of
> " the opinion that the company is doing busi-
> " ness within this State, and therefore a di-
> " rector of the defendant is a proper officer
> " upon whom service of the summons can be
> " effected."

This is another case directly in point. It is said in the opinion, distinguishing Goldey *v.* Morning News:

> " In that case the officer served was tem-
> " porarily within the jurisdiction of the State
> " of New York, and had no permanent resi-
> " dence or domicile therein."

In Revans *v.* Southern Missouri & A. R. Co., 174 Fed. R., 982, the head-note is as follows:

> " Where the president of a foreign railroad
> " corporation was resident in the State, and
> " had an office therein, in which he performed
> " his duties as such president, and had done
> " so for many years past, the service in an ac-
> " tion against the corporation arising without
> " the State on complainant within the State
> " was properly made upon such president."

Steamship Co. *v.* Kane (170 U. S., 100), which was a similar case is cited.

Now, if the residence of a president, who is merely an agent of the Board of Directors, is sufficient to give jurisdiction of a cause of action, arising without the State. How can it be said, that there is no jurisdiction when most of the directors reside within the State, when the whole board adopt the State as their business domicile, for all executive functions, and, moreover, the cause of action arose within the State?

IV.—IT IS SUBMITTED, FOR THE REASONS ABOVE STATED, THAT THE JUDGMENT OF THE CIRCUIT COURT SHOULD BE REVERSED.

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FILE COPY.

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 238.

Office Supreme Court U. S.
FILED
APR 11 1903
JAMES H. McKENNEY,
Clerk.

JEFFERSON B. CONLEY,

Plaintiff in Error,

against

THE MATHIESON ALKALI WORKS.

BRIEF ON BEHALF OF THE DEFENDANT IN ERROR.

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Of Counsel.

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UNITED STATES SUPREME COURT.

JEFFERSON B. CONLEY,
Plaintiff in Error,

vs.

THE MATHIESON ALKALI WORKS,
Defendant.

BRIEF IN BEHALF OF THE DEFENDANT IN ERROR.

Preliminary Statement of the Case.

This is a question of jurisdiction upon writ of error to the United States Circuit Court for the Southern District of New York, upon its determination that it had no jurisdiction of the defendant (p. 2, fol. 5), by reason of which the Circuit Court set aside the summons and the pretended service thereof as null and void and of no effect (p. 123, fol. 237).

The Circuit Court, upon the papers and the report of a master appointed (p. 54, fol. 103) to take testimony and report upon the questions of fact involved, found "as a "fact that at the time of the alleged service of the sum- "mons in this action the defendant corporation did not "have any agent, office or property within the State of "New York and was not doing business within the State "of New York" (p. 123, fol. 237), *held*, that the case of

Note.—Citations in this brief are to the printed pages of the record.

Goldey *vs.* Morning News, 156 U. S., 518, and Wabash Western Railway *vs.* Brow, 164 U. S., 271, were therefore controlling, and that the Court had acquired no jurisdiction of the defendant.

Undoubtedly, these cases are decisive upon the question of jurisdiction raised upon this Appeal, if the facts have been correctly found by the Circuit Court.

Statement of Facts.

I.—This action is for a personal judgment against the defendant Mathieson Company, for its alleged breach of a contract (pp. 9, 10), with plaintiff's assignee, T. T. Mathieson, always a citizen and resident of Great Britain (p. 3, IV.), under which he was to render services at Saltville, Virginia, for two or three years at 3,000 pounds sterling per anuum, and for five other years (balance of eight years) at 1,500 pounds sterling per annum, during which period of five years "said Mathieson should not be "required to spend any more time in America than he "may elect to spend"; The Mathieson Company to "provide a suitable residence for said T. T. Mathieson at Saltville, Virginia, during said eight years, &c.," and to also pay him a percentage upon certain net profits from the Mathieson works at Saltville, Virginia, over 60,000 pounds sterling per annum. The contract recites that Mathieson Alkali Works is a Virginia corporation "with "headquarters located at Saltville in said state."

The complaint alleges failure to pay the 1,500 pounds sterling for the last five years and for an accounting of profits at Saltville.

It needs no argument to show that failure to pay occurred, and the cause of action, if any, arose either at Saltville or in England, not in New York. This is self-evident. Both parties were strangers to New York.

Mathieson was a citizen of Great Britain and was to be either at Saltville or not in America, and payments were to be made in pounds sterling. The "headquarters" of the Company were located at Saltville.

There is no basis for any claim by plaintiff, Mathieson's assignor for the purpose of bringing this action, that the cause of action arose in New York.

II.—It is admitted in the record (pp. 55, 56) and alleged by plaintiff in his complaint (p. 31, III, VI, VII), that the defendant Mathieson Company is a corporation of the State of Virginia, duly organized there in August, 1892, for the manufacture of salt, bleaching powder and chemicals of all kinds, with its manufacturing plant and works at Saltville, in said state (p. 61).

It is also both admitted (p. 55, 56) and alleged by plaintiff in his complaint (p. 31, IV) that Castner Electrolytic Alkali Company is also a corporation "duly incor- "porated under the laws of the State of Virginia, July, "1900, and still exists as such corporation" (p. 59).

III.—On April 18th, 1901, the plaintiff attempted to begin this action against the defendant Mathieson Company in the New York Supreme Court, by delivering on said day a copy of the Summons and complaint, in the City of New York, to John G. Agar and R. T. Wilson, two members of the Board of Directors, neither of whom were officers of the defendant. "Neither of them is or has been at "any time an officer or agent of the defendant, or author- "ized to represent it or engaged in any way in the con- "duct or management of its affairs except merely in an "advisory capacity as members of the Board of Directors" (Affidavit of Mr. Arnold, President of the Company, at p. 21).

The defendant appearing specially for that purpose only, duly removed the action to the Circuit Court of the United

States for the Southern District of New York, and then at once moved to set aside the summons and its service as null and void on the ground, that the defendant was a corporation of the State of Virginia, having no office, no property and no agent within the State of New York, and not doing business within said state (Goldey *vs.* Morning News; Wabash Western Ry. *vs.* Brow).

After hearing argument upon this motion and considering all the affidavits and papers submitted by both parties, and the question of fact having been raised as to "whether or not at the time of the service of the sum-"mons in this action, the defendant corporation was "doing business within the State of New York," the matter was referred by the Court to Arthur H. Masten, Esq., as a Master, to take testimony and report (p. 53, 54). This reference proceeded; both parties were represented before the Master by counsel (p. 55), and in addition to the pleadings and affidavits before the Court, testimony was taken covering 63 printed pages of the record (pp. 55–118). No evidence was submitted by the plaintiff.

IV.—The further facts in the case are summarized in the Master's report, which appears in full in the printed record, pages 119 to 121, to which the attention of the Court is particularly called by the defendant as a refutation on its face of the plaintiff's claim respecting the situation of the Mathieson Company in the State of New York at the time of the pretended service of the summons in this action, April 18th, 1901.

The following extracts from the Master's report summarize the most material facts:

"The defendant is a corporation duly organized and "existing under the Laws of the State of Virginia, and "since the year 1893, has maintained and operated an "extensive plant in Saltville, Virginia, for the manufac-

"ture of salt, caustic soda, soda ash and bicarbonate of "soda."

"Prior to December 31, 1900, said defendant also owned "and operated a plant for the manufacture of caustic soda "and bleaching powder by electricity, located at Niagara "Falls, in the State of New York, under a patented "process known as the Castner Electrolytic process" (p. 119, fol. 229).

"By an instrument in writing, bearing date the 31st "day of Decembe 1900, and executed by its President "on the 24th day of January, 1901, said defendant cor- "poration sold and transferred to a corporation known "as the Castner Electrolytic Alkali Company, organ- "ized under the laws of the State of Virginia, all the "plants, rights and property of every kind and descrip- "tion of the Mathieson Alkali Works at Niagara Falls in "the State of New York, together with all inventions, "patents and patent rights owned and used by it or in "connection with its said works, together with all trade- "marks and the good will of the business as a going "concern, free of all encumbrances, except as to the con- "tinued rents, royalties or charges under any existing "leases or agreements" (p. 119, fol. 230).

* * * * *

"Said instrument was duly delivered and the physical "transfer of the property therein specified was made dur- "ing the month of January, 1901, and said instrument "was placed on record in the County of Niagara and "State of New York, on the 15th day of February, 1901" (p. 119, fol. 230).

* * * * *

"The defendant corporation since a period prior to the "31st day of December, 1900, had and still has its prin- "cipal office for the transaction of business in the City of "Providence, at which its records and books of accounts "are kept, and an office force of several employees is

" engaged. The bank account of said defendant was dur-
" ing the period in question and is now kept in the City
" of Providence. It has no office within the State of New
" York, none of its books, records or accounts are kept in
" this State, nor has it since January 1st, 1901, sold any
" of its products here " (p. 120, foot of fol. 231).

* * * * *

" Upon the facts thus outlined it does not appear that
" the defendant corporation was at the time of the service
" of the summons herein, viz., April 18, 1901, doing busi-
" ness within this State " (New York).

" The fact that it held the entire capital stock of the
" Castner Company and that the operations of that Com-
" pany were carried on under the same management as
" before December 31, 1900, is not material. The new
" corporation was a separate legal entity." * * *
" It was that corporation alone which transacted any
" business in this State (since December, 1900) notwith-
" standing it may have been for all practical purposes
" merely the instrument of the defendant corporation."
(People *vs.* Am. Bell Telephone Co., 117 N. Y., 241;
United States *vs.* Same, 29 Fed. Rep., 17; p. 121, fol.
223.)

Counsel might also cite 13 Peters, 587, upon this same point.

V.—Upon the report of the Master, and upon all the affidavits and other proceedings, the Court, on the 21st day of January, 1902, made its order approving and confirming the report of the Master in all respects, and setting aside the summons and the service thereof as null and void.

The attorneys for the plaintiff in error duly excepted to the Master's report and filed their assignment of errors to the findings of the Court upon the following points to the effect (pp. 123, 124):

That it was error to find with respect to the time when the summons was served on the Mathieson Alkali Works.

(I.) That the business dealings of the defendant corporation with Arnold, Hoffman & Co., were carried on through the Providence office of said Arnold, Hoffman & Co.

(II.) That the Mathieson Alkali Works had no office within the State of New York.

(III.) That the Mathieson Alkali Works had not since January 1st, 1901, sold its products within the State of New York.

(IV.) That the Mathieson Alkali Works at the time of the service of the summons in this action, viz.: April 18, 1901, was not doing business within the State of New York.

(V.) That the Court erred in setting aside said summons and declaring the same to be null and void.

Writ of error was then taken by plaintiff to this Court.

VI.—In support of each of the findings, the testimony of Mr. Gladding, the Treasurer of the Mathieson Company on April 18, 1901, and for four or five years prior thereto (p. 56, fol. 109), is specific and positive.

It seems unnecessary in this brief to do more than call attention to a few extracts from this testimony to show that the contention of the plaintiff in error as to these findings and his exceptions are without foundation.

1. Upon the sales of the Mathieson Company products, the testimony of Mr. Gladding is as follows:

On page 66, on cross-examination:

"Q. What relation has Arnold, Hoffman & Company to your concern? A. They are the selling agents.

Q. Where is there place of business? A. They have offices in several cities. Their *head office is in Providence.*"

On pages 115, 116, on re-direct examination:

"Q. You have been asked on your cross-examination some questions relating to the sale of its products by The Mathieson Alkali Works; please state how the products of The Mathieson Alkali Works were sold for the period of a year prior to April 18, 1900? A. Except for salt and bi-carbonates, which are sold from Saltville (Virginia), all the product of The Mathieson Alkali Works is sold from Providence, under the direction of Mr. Arnold, of Arnold' Hoffman & Company, who are also in Providence. Arnold, Hoffman & Company act only as the selling agents, subject in every instance to The Mathieson Alkali Works.

Q. Are all sales in every instance submitted to The Mathieson Alkali Works at Providence? A. They are, in every single instance.

Q. And approved or disapproved at Providence by the Company? A. In every instance.

Q. Before being accepted? A. In every case.

Q. Excepting those sold at Saltville? A. Excepting those sold at Saltville.

Q. What is Arnold, Hoffman & Company? A. Arnold, Hoffmann & Company is a firm, doing a general chemical business and acting in relation to The Mathieson Alkali Works as its selling agents.

Q. Is Arnold, Hoffman & Company a corporation or not? A. Yes, sir. A corporation of the State of Rhode Island.

Q. Where does it have its head office and place of business? A. At Providence.

Q. Where do you have your dealings with Arnold, Hoffman & Company. That is I mean where do you as an officer of The Mathieson Alkali Works have all your dealings with Arnold, Hoffman & Company? A. At Providence, only.

Q. You have alluded in your testimony, or counsel for the plaintiff has made reference to Arnold, Hoffman &

Company in New York. What are the facts in reference to that? A. The facts in reference to that are, so far as dealings are concerned by The Mathieson Alkali Works with Arnold, Hoffman & Company, we do not know of the existence of them in New York. Our dealing are only and solely with Arnold, Hoffman and Company in Providence.

Q. Are your products sold on contract for future deliveries or not? A. They are largely so. On contract for future delivery. Almost entirely, almost altogether sold on contracts for future delivery.

Q. And these contracts are submitted to The Mathieson Alkali Works at Providence before being accepted by it? A. In every case.

Q. And these contracts in every case are accepted on behalf of The Mathieson Alkali Works only at Providence? A. Yes.

* * * * *

Q. And who pays for the goods? A. Arnold, Hoffman & Company pay The Mathieson Alkali Works.

Q. Where? A. At Providence.

* * * * *

Q. Have you any dealings or has The Mathieson Alkali Works any dealings with reference to these goods except with Arnold, Hoffman & Company in Providence? A. They have not."

Counsel for the defendant would call attention here to what appears in plaintiff's brief to be a misquotation from Mr. Gladding's testimony on this point.

On page 11 of his brief, plaintiff's counsel quotes Mr. Gladding in the last question and answer on said page as follows:

"Q. But how many times or when you cannot tell? A. "I cannot. *Arnold, Hoffman & Company's place of* "*business is in the City of New York.*"

But no such answer can be found in the record. On

page 71, folio 139, it will be found that the answer in question consists only of the words "I cannot."

"Q. But how many times or when you cannot tell?"
"A. I cannot.

"Q. Who is President of the Alkali Company now?"

The words "*Arnold, Hoffman & Company's place of business is in the City of New York*" inserted in the plaintiff's brief as a quotation, is not part of Mr. Gladding's answer to the question. Nor can any such statement be found anywhere in the record. Mr. Gladding has, on the contrary, testified repeatedly that Arnold, Hoffman & Company's place of business is in Providence, and that they have only a branch office in New York.

As it is a part of plaintiff's contention, without, however, anything in the record to support it, that Arnold, Hoffman & Company's chief place of business is in New York, we call attention to the matter here at length, that the Court may not be misled by this incorrect statement in plaintiff's brief.

Mr. Gladding testifies further with reference to the dealings of the Mathieson Alkali Works with Arnold, Hoffman & Company.

On page 98:

"Q. Do you get anything from Arnold, Hoffman & Co. (referring to information regarding sales)? A. Yes, sir.

Q. Are they not in New York? A. It is not reported to me from New York. It is reported to me from their Providence office, which is the only office I recognize, where they do their business is their affair, I do not know" (p. 98, fol. 189).

* * * * * *

And on page 99:

"Q. And Arnold, Hoffman & Company carry on their business here (that is in New York)? A. Their office is in Providence. The office of Arnold, Hoffman & Co. is in

Providence. That is where the President and Treasurer of that Company are.

Q. They do not do any business here, then? A. Yes, they do; I am told they maintain an office here; but that is not their principal office.

* * * * * *

Q. Do they do their main business in Providence? A. Yes, sir.

Q. Do they sell their goods there? A. Yes, sir."

And the Master's report uses the following language:

"The corporation of Arnold, Hoffman & Co. has a "branch office in the City of New York, but the business "dealings of the defendant corporation and of the Cast- "ner Company with Arnold, Hoffman & Co., are carried "on through the Providence office of said last-mentioned "corporation." "Nor has it (the Mathieson Company) "since January 1st, 1901, sold any of its products here "(New York)" (p. 120, fol. 231).

Evidently the Master's finding is proper and accords with the evidence.

2. Mr. Gladding also testifies further, on page 117:

"Q. Has The Mathieson Alkali Works, since the sale of the plant at Niagara Falls to the Castner Electrolytic Alkali Company, had any office or place of business of any kind in the State of New York? A. It has not.

Q. Has it had any books of account or any records or any clerks in the State of New York? A. It has not.

Q. Has the Mathieson Alkali Works had any financial agency of any kind in the State of New York? A. It has not.

Q. Since that time or before that? A. Neither before nor since.

Q. Has the Mathieson Alkali Works at any time since you have been the Secretary and Treasurer of the Company had any office for any purpose whatever, or any

books or records at No. 33 Wall Street, New York City? A. They have not."

On page 118, upon re-direct examination:

"Q. Has the Mathieson Alkali Works at any time since you have been the Secretary and Treasurer of the Company, had any office for any purpose whatever or any books or records at No. 33 Wall Street, New York City? A. They have not.

Q. You were asked in your cross-examination with reference to the plant and property of the Mathieson Alkali Works at Saltville, Virginia. Will you state about how much the investment of the Company is at Saltville, Virginia, in round figures of millions of dollars? A. About three and a half to four millions of dollars.

Q. Is it true or not that the entire original capital of the Company was invested at Saltville, Virginia? A. It was.

Q. And that no part of it was invested anywhere else? A. It was not."

There is not in the record a single word of proof to indicate that since the sale of the Niagara plant to the Castner Company iu January, 1900, The Mathieson Company has had any office, agency, agent, employee, or property, or transacted any business of any kind within the State of New York.

3. Counsel for the plaintiff in error refers to financial dealings of the Mathieson Alkali Works with the banking house of R. T. Wilson & Company, but with respect to this the testimony is specific that the Mathieson Company merely borrowed money from Mr. Wilson's firm.

Mr. Gladding's testimony upon cross-examination is as follows (p. 82):

"Q. R. T. Wilson had a running account with the Company, did it not? A. As lenders of money only.

Q. Did the company ever deposit money with R. T. Wilson & Company? A. No, sir, not to my knowledge.

Q. Do you know whether it did or not? A. It has not within my knowledge. (Witness had been Treasurer about 5 years, p. 56).

Q. Did it since your connection with it? A. It has not.

Q. On what bank does it draw checks to pay bills with? A. On a bank in Providence.

Q. On no other? A. On no other except one in Virginia."

The Master finds that the Mathieson Alkali Works "has no office within the State of New York; none of its "books, records or accounts are kept in this State, nor "has it since January 1st, 1901, sold any of its products "here" (p. 120, fol. 231).

The finding seems to be fully supported by the evidence.

VII.—It is wholly immaterial to the question of jurisdiction whether the Mathieson Alkali Works owns all the stock of the Castner Electrolytic Alkali Company or not, or whether the directors of the two companies are the same or not.

Or whether the product of the Castner Company at Niagara is sold by the same selling agents, Arnold, Hoffman & Company, which sell the products of the Mathieson Company in Virginia.

Nor whether the Mathieson Company has borrowed money of the banking house of R. T. Wilson & Co.

Nor whether Mr. Wilson owns more or less of the capital stock of the Mathieson Alkali Works.

None of these matters are of the slightest importance, and although the plaintiff's counsel dwelt upon them as if they attached weight, they have no bearing upon the question of jurisdiction involved in this appeal.

VIII.—Much stress is also laid by plaintiff's counsel upon the fact that in 1896, when the Mathieson Company built its Niagara plant, a by-law was adopted providing that the directors in addition to other meetings, should hold a regular monthly meeting in the City of New York, but it does not follow from this that the company had an office in the City of New York at the time of the beginning of this action; and the positive testimony of Mr. Gladding, the Secretary and Treasurer; the affidavits of Mr. Arnold, its President; Mr. R. T. Wilson Mr. Agar, two of its directors, stating positively that there was no office in the City of New York, and had not been for some time, must be regarded as conclusive in support of the finding of the Master. Having sold out its Niagara plant and patents, the Mathieson Company retired wholly and absolutely from New York State.

With respect to any meetings that were held in New York, the testimony is, that they were held at the office of R. T. Wilson & Company, or the *branch* office of Arnold, Hoffman & Company.

The Master, in his report, uses the followning language:

"It did not appear that meetings of the directors had "been held in accordance with this by-law, the fact being "that they were held sometimes in Saltville and some-"times in Providence, and during the year 1901, at least, "were held not more than two or three times in this city, "and then at the branch office of Arnold, Hoffman & "Company, the selling agents, or at the office of Messrs. "R. T. Wilson & Co., bankers, in Wall Street" (fol. 232).

No inference can be drawn from the mere holding of a directors' meeting in New York, that the Mathieson Company, after the sale in December, 1900, of its Niagara plant and property, had any office in New York, and any possible inference is negatived absolutely by the sworn statements above referred to of Mr. Arnold, of Mr. Wil-

son and of Mr. Agar, and by the testimony already quoted of the Treasurer, Mr. Gladding.

Nor would the mere holding of a directors' meeting in New York by the Mathieson Company since December, 1900, under the facts shown in the record, be doing business within the State. Moreover, the by-law referred to adopted in 1896, appears by the testimony to have been "superseded" or "amended" as the witness, who is a layman, calls it (pp. 73–74).

The New York courts in the recent case of Dives-Pelican Mining Co. *vs.* Feitner, 77 App. Div., 189, decided in January, 1903, have held with respect to a foreign corporation, not only that "the fact that it had an office "here and was authorized to do business, did not make "it 'doing business,'" within the State, but that having an office and holding directors' meetings for the purpose of declaring dividends and having the cash in bank in New York for the purpose of paying such dividends, was not doing bnsiness in the State of New York, and also that such bank deposit was not even liable to taxation in New York, because the Company was not doing business there.

It would be a novel proposition to hold that a corporation was doing business in every State where any of its directors happened to reside. It cannot be seriously contended by plaintiff that a corporation is doing business in a State foreign to its domicile or residence, simply because one of its directors, performing no other duties except as an adviser in directors' meeting, and not otherwise acting in any capacity for said Company, happens to reside in such foreign State. Yet that appears to be one of the propositions upon which plaintiff's counsel rests his claim of jurisdiction of the Mathieson Alkali Works in the State of New York in the present case.

IX.—Plaintiff's exceptions to the findings of the Master

and of the Circuit Court are devoid of merit, for the reason, first, that there is no evidence to support any exceptions, and second, that not only are all the findings in accordance with the evidence, but no other findings would be possible or could be sustained upon the record.

Argument.

I.—The facts being, as found by the Circuit Court, that at the time of the alleged service of the summons in this action, the defendant corporation did not have any agent, office or property within the State of New York and *was not doing business within the State of New York*, further argument would seem almost unnecessary in this Court, to dispose of the sole question thus presented for review, as to whether the Circuit Court had jurisdiction of the person of the defendant, in view of the authoritative determination of this precise proposition made by this Court in the case of *Goldey* vs. *Morning News*, 156 U. S., 518, and the numerous reaffirmations of the same in subsequent cases, hereinafter cited.

In the case of *Goldey* vs. *Morning News*, 156 U. S., 518, this Court says, in the opening paragraph of its opinion by Mr. Justice Gray, as follows:

> "This writ of error presents the question whether, in a personal action against a corporation, which neither is incorporated *nor does business within* the State nor has any agent or property therein, service of the summons upon its President, temporarily within the jurisdiction, is sufficient service upon the corporation,"

and in answering this question in the negative, and holding that such service could not be recognized and was void and should be set aside, the rule of law was established by this Court, which applies equally to all similar cases.

Notwithstanding the arguments of the plaintiff in error to the contrary, the facts in the present case do not distinguish it in any respect from the Goldey case and the same rule should be applied. The Mathieson Company was not present in the State of New York on the 18th day of April, 1901, and the pretended service of summons was void.

II.—Many cases have been cited at various times by plaintiff's counsel as supporting his contentions respecting the question of jurisdiction in this case, but upon examination it appears that the facts in each are materially different and that none of them is any authority for the plaintiff in the present case, as his counsel would lead the Court to believe.

In *Barrow Steamship Co.* vs. *Kane*, 170 U. S., 100, the jurisdiction was upheld because the steamship company, a foreign corporation, was regularly engaged in doing business in New York, and the summons was duly served upon a regularly appointed agent of the company in New York.

At the same time this Court, both in this case and in the Goldey case, states emphatically that it is immaterial whether such service is recognized as sufficient by the statutes or the judicial decisions of the State where the service is made, which answers one of the contentions of plaintiff's counsel. See also *St. Clair* vs. *Cox*, 106 U. S., 350.

In *Connecticut Mutual Life Insurance Co.* vs. *Spratley*, 172 U. S., 602, the Court found that although the foreign corporation, the Insurance Company, had no property in Tennessee, it was doing business within the State at the time of the service of process and had an agent therein, upon whom the same was duly served.

In *Henrietta Mining Co.* vs. *Johnson*, 173 U. S., 221, the proceeding was to set aside a judgment obtained in

Arizona against the Mining Company, and the Court found that the Mining Company was actually doing business in Arizona and that the summons had been served upon its duly authorized agent within the State and was valid. The question in this case was whether the Arizona judgment had been duly taken under the provisions of the Arizona statutes.

In *Société Foncier* vs. *Milligan*, 135 U. S., 304, where an application was made to set aside a judgment against the plaintiff in Texas two years after it had been entered, it was found by the Court that the foreign corporation was actually engaged in business in Texas, with a resident agent whose authority was unquestioned. In fact, the indebtedness upon which the action in the Texas Court was founded and the judgment was taken, had been contracted by the very agent upon whom the service of process in Texas had been personally made. Moreover, his authority was not questioned by the corporation.

In the *Matter of Hohorst*, 150 U. S., 653, which was upon a petition for a mandamus to the United States Circuit Court to take jurisdiction of the Hamburg-American Packet Company in a suit for an infringement of a patent, this Court held that the Steamship Company was regularly engaged in business in the State of New York and had a duly authorized agent there, and that service upon such agent, the corporation being regularly engaged in business in New York, was good service and conferred jurisdiction over the corporation.

In the case of *Meyer* vs. *Pennsylvania Lumber Insurance Co.*, 108 Fed. Rep., 169, the District Court in the Western District of New York held the service of process upon a resident director good, because the defendant Insurance Company was actually engaged in doing business in the State and the course of action arose within the State.

In *Southern Pacific Co.* vs. *Denton*, the only question

involved was whether either party was a resident of the district in which the action was brought.

Cowley vs. *Northern Pacific Railway Co.*, 159 U. S., 583, was a proceeding to set aside a judgment in a State Court claimed to be void for fraud, and this Court held, that the nature of this proceeding, originally brought in the State Court, under a special statute applicable to such cases, could not be changed into a suit in equity upon removal to the United States Court, and, because it had in fact been prosecuted in the United States Court as if a suit in equity, the petition could not be thereby deprived of the rights to which he was entitled in the original proceeding under the special statute.

In the case of *Reilly* vs. *Philadelphia & Reading R.R. Co.*, 109 F. R., 349, the District Court, Southern District of New York, Brown, *D. J.*, held upon the authority of Goldey *vs.* Morning News and *In re* Hohorst that:

> "It must be held that service of process upon a mere director who is found within the district, but who neither transacts any corporate business here, nor is charged with any business of the corporation, would not under the general law be sufficient service upon the corporation."

He found, however, that the defendant corporation was in fact actually engaged in business in the State of New York and had property within the State, and upon these facts held that the service was valid.

There is, therefore, nothing in this Reilly case to support the contention of the plaintiff, because even if the decision in the Reilly case be sound, the Mathieson Company, not having any property within the State of New York and not transacting any business within the State of New York, does not come within the exception made by Judge Brown.

In *Revans* vs. *Southern Missouri & Arkansas R.R.*, 114 F. R., 982, service upon defendant's president in New

York, also a resident of New York, was held to be good, because the defendant foreign corporation had a regular office for the transaction of its corporate business in the City of New York and its president there transacted all the business of the corporation and discharged all his duties as president, except such as took him out of the State, and this situation had continued for several years. Moreover, the cause of action itself arose in New York. The service was held good upon the authority of *Barrow Steamship Co.* vs. *Kane.*

In the case of the Steamship Co. *vs.* Kane, the very question contended for at length by the plaintiff in this action, that the New York statutes applied, was argued and considered at length and was decided adversely to the New York statute by this Court, which used the following language, in the opinion of Mr. Justice Gray, at page 111:

> "It is well settled in a suit against a corporation of one State brought in a Court of the United States held within another State, in which the corporation neither does business nor has authorized any person to represent it, services upon one of its officers or employees found within the State will not support the jurisdiction, notwithstanding that such service is recognized as sufficient by the statutes and the judicial decisions of the State."

The contention of the plaintiff in this case, that the question of jurisdiction should be considered only with reference to the New York statutes, has already been adversely decided and determined by this Court in the case of Barrow Steamship Co. *vs.* Kane.

In the case of *Empire Mining Co.* v. *Propeller*, *108 F. R., 901*, a totally different question is presented upon a motion to remand for lack of any jurisdiction. This is a familiar motion and has invariably been decided in the same way as in this Empire Mining case, which presents

nothing new. See Stalker *vs.* Pullman Palace Car Company, 81 F. R., 989.

Simonton, *C. J.*, in this Empire Mining Co. case at page 903, recognizes the difference between that case and the Goldey case, 156 U. S., 525, approving it and stating that there is no parallel between the two cases.

In the case of *Tootle* vs. *Coleman*, which more than any other case seems to have troubled plaintiff's counsel, the defendant was not a corporation, and the action was *in rem.*, the case has, therefore, no bearing upon the present appeal. If, however, any thing in the Tootle's case would apply to the present case it would be without authority in this Court because inconsistent and at variance with the rule in the case of Goldey *vs.* Morning News and Barrow *vs.* Kane, just cited.

III.—Plaintiff has intimated at various times that the cause of action in the present case arose in the State of New York, because as he alleges the contract between the Mathieson Company and plaintiff's assignor, T. T. Mathieson, was executed in New York. But this action is for an alleged breach of that contract. And, as already considered in this brief (*ante* p. 2), an examination of the contract itself (Record, pp. 9 and 10) shows that such breach could not have occurred in the State of New York, but must have been either at Saltville or Providence or in Great Britain. Inasmuch as the payments were to be in pounds sterling, and Mathieson was a resident of Great Britain, presumably the breach was in England.

It is evident, therefore, that the cause of action, if any, did not arise within the State of New York. There is, therefore, no basis nor any claim of jurisdiction on the ground that the cause of action arose within the State of New York.

IV.—Upon the facts that the defendant the Mathieson Alkali Works on April 18, 1900, when the alleged service

of the summons in this action was made upon it, did not have any agent, office or property within the State of New York, and was not doing business within the State of New York; and upon the authority of the cases referred to, the decision and order of the Circuit Court should be affirmed and the appeal of the plaintiff in error dismissed.

October Term, 1902.

Alfred Ely,
Of Counsel for Defendant.

Supreme Court of the United States.

No. 238.—October Term, 1902.

Jefferson B. Conley, Plaintiff in Error, vs. The Mathieson Alkali Works. } In error to the Circuit Court of the United States for the Southern District of New York.

[May 18, 1903.]

Mr. Justice McKenna delivered the opinion of the Court.

The plaintiff is a citizen of the State of New York, and the defendant was incorporated in the State of Virginia. The plaintiff as assignee of T. T. Mathieson brought this action in the Supreme Court of New York County, State of New York, against the defendant for moneys alleged to be due on a contract made and entered into by Mathieson and defendant. The complaint alleged that the contract was made in the city of New York on the 15th of August, 1893. The articles of agreement show that Mathieson's employment was as general superintendent for the term of eight years, in the erection and general management of the works of the corporation, "and also of their operation, after the same shall have been erected." The defendant had designated no agent upon whom service could have been made, and summons was served on R. T. Wilson and John G. Agar, two members of the board of directors of the corporation, both residents of the city of New York. They were not officers of the company. Before the time for answer had expired, on defendant's motion the cause was transferred to the United States Circuit Court for the Southern District of New York. A motion was made in that court to set aside the summons and service as null and void. Affidavits were presented by both parties, and ruling on them the court said that if the facts stated by the affidavits of the defendant were true, that at the time of the service of the summons and for some months before defendant corporation had ceased to do business in the State, the motion should be granted. But it was said that "the affidavits of complainant are mainly on information and belief, but annexed to them is a letter, the genuineness of which is not questioned, which bears date March 15, 1901, (two months and a half after the alleged cessation of business at Niagara Falls,) and signed by the treasurer of the defendant corporation, in which he speaks of the plant at Niagara Falls as still being operated by the defendant. Under these circumstances the court would not be warranted in granting this motion, in view of the conflict of fact. If, however, the

defendant feels assured that the apparent discrepancy can be explained, and is willing to pay the expenses of a reference, it may be sent to a master to take testimony and report to the court whether or not at the time of the service of the summons the defendant corporation was doing business within this State."

A reference to the master was made. After taking testimony (which occupies sixty-two pages of the record), the master reported that, beside its plant at Saltville, the defendant, prior to December 31, 1900, owned and operated a plant for the manufacture of caustic soda and bleaching powder by electricity, located at Niagara Falls, under a patented process, known as the Castner electrolytic process; that on the 31st of December, 1900, it conveyed this plant and all of the property of the defendant, of every kind and description, to the Castner Electrolytic Alkali Company, a corporation organized under the laws of Virginia; that the consideration expressed for the conveyance was one dollar and other valuable considerations, but that the substantial consideration was the entire capital stock of the Castner Electrolytic Alkali Company; that the selling agent for the products manufactured at Niagara Falls, before and after the transfer, was Arnold Hoffman & Co., a corporation organized under the laws of Rhode Island, and had and has its principal place of business in Providence, in that State; that said company was and is the selling agent for the Saltville products, with some exceptions, and that said corporation has a branch office in the city of New York, but the business dealings of the defendant corporation and of the Castner Company with Arnold Hoffman & Co are carried on through its Providence office; that the defendant, since a period prior to the 31st day of December, 1900, had, and still has, its principal place of business in the city of Providence, and that its books and records are kept there, and it has also an office force, consisting of several employes, that its bank account is also kept in said city, and that it has no office in the State of New York—none of its books, records or accounts are kept there, nor has it, since January 1, 1901, sold any of its products there; that a by-law of the company, adopted in 1896, provided that the directors should hold monthly meetings in the city of New York, on the second Wednesday of each and every month in each year, but that it did not appear, however, that meetings had been held in compliance with the by-laws, the fact being that they were held sometimes in Saltville and sometimes in Providence, and, during the year 1901, at least, were held not more than two or three times in New York city, and then at the branch office of Arnold Hoffman & Co., or at the office of R. T. Wilson & Co., bankers, in Wall street, a member of which firm was a director of the defendant company, and one of its principal stockholders; that the admissions in a letter of the treasurer of the company, March 15, 1901, "are fully explained by the fact that it followed earlier correspondence in

which the plan of disposing of the plant at Niagara Falls for the stock of a new company was brought to the attention of Mr. Pell," the president, to whom the letter was addressed. The master's report concluded as follows:

"Upon the facts thus outlined, it does not appear that the defendant corporation was, at the time of the service of the summons herein, viz., April 18, 1901, doing business within this State.

"The fact that it held the entire capital stock of the Castner Electrolytic Alkali Company and that the operations of that company were carried on under the same management as before December 31, 1900, is not material. The new corporation was a separate legal entity, and whatever may have been the motives leading to its creation it can only be regarded as such for the purposes of legal proceedings.

"It was that corporation alone which transacted any business in this State, notwithstanding it may have been for all practical purposes merely the instrument of the defendant corporation. (*Peo* v. *Am. Bell Telephone Co.*, 117 N. Y. 241; *United States* v. *The Same*, 29 Fed. Rep. 17.)"

The plaintiff excepted to the report, the rulings of the master on the admission of testimony, and to his conclusions. The report was affirmed and the service of summons sets aside and declared null and void. This ruling is assigned as error.

The fundamental proposition of plaintiff in error is that the State court had jurisdiction of the defendant in error, and that therefore the Circuit Court of the United States had jurisdiction. To sustain the jurisdiction of the State court subdivision 3 of section 432 and section 1780 of the Code of Civil Procedure of the State are cited. Subdivision 1 of section 432 provides for service upon certain enumerated officers of a foreign corporation; subdivision 2 provides for the designation of a person by the corporation upon whom process may be served. Subdivision 3 is as follows:

"If such a designation is not in force, or if neither the person designated nor an officer specified in subdivision first of this section can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein, to the cashier, a director or a managing agent of the corporation within the State."

Section 1780 is as follows:

"SEC. 1780. An action against a foreign corporation may be maintained by a resident of the State or by a domestic corporation for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation or by a non-resident, in one of the following cases only:

"1. Where the action is brought to recover damages for the breach of a contract, made within the State or relating to property situated within the State, at the time of the making thereof.

"2. Where it is brought to recover real property situated within the State.

"3. Where the cause of action arose within the State, except where the object of the action is to affect the title to real property situated without the State."

These sections, it is insisted, gave the State court jurisdiction, and that it follows that the Circuit Court had jurisdiction. But granting the existence of a cause of action, it is not every service upon an officer of a corporation which will give the State court jurisdiction of a foreign corporation. This was declared in *Goldey* v. *Morning News*, (156 U. S. 518.) The case arose in New York, and the question presented was "whether, in a personal action against a corporation which neither is incorporated nor does business within the State, nor has any agent or property therein, service of the summons upon its president, temporarily within the jurisdiction, is sufficient service upon the corporation."

As there was a difference between the rulings of the State court of New York and the Circuit Courts of the United States on the question, it was elaborately considered "upon principle and in the light of previous decisions of this court." The decisions were examined and the question was answered in the negative, and it was announced, as "an elementary principle of jurisprudence, that a court of justice cannot acquire jurisdiction over the person of one who has no residence within its territorial jurisdiction, except by actual service of notice within the jurisdiction upon him nor upon some one authorized to accept service in his behalf, or by his waiver, by general appearance or otherwise, of the want of due service. Whatever effect a constructive service may be allowed in the courts of the same government it cannot be recognized as valid by the courts of any other government." It was also held that the defendant by filing a petition for removal did not waive defects in the service of summons, and that objection could be made of such service in the Circuit Court of the United States in the same manner as if the action had been originally commenced there. *Goldey* v. *Morning News* was affirmed in *Wabash Western Railway* v. *Brou*, (164 U. S. 271.)

The principle announced in *Goldey* v. *Morning News* covers the case at bar. The residence of an officer of a corporation does not necessarily give the corporation a domicile in the State. He must be there officially—there representing the corporation in its business. (*St. Clair* v. *Cox*, 106 U. S. 350.) In other words a corporation must be doing business there, and, recognizing the necessity of this, the Circuit Court referred that issue to a master. The decision upon the issue was adverse to the contention of the plaintiff, and we cannot say that it was not sustained by the evidence and the presumptions which must be conceded to the report of a master and the judgment of the lower court. The defendant was competent to convey its property to the Castner Electrolytic Alkali Company, and afterwards make the locality of its own business Providence and Saltville. Whether the transfer to the latter company was fraudulent we certainly cannot decide from this record, and the by-law, which provided for a monthly meeting in New York, could not of itself keep the corporation in New

York. The testimony is positive that no business of the corporation was done in New York city after the transfer of the Niagara Falls plant; that all of the business of the corporation was conducted at Providence, except of a purely manufacturing character, which was conducted at Saltville.

The following is an extract from the testimony of the secretary and treasurer:

"The offices of the Mathieson Alkali Works at Providence conducted all the business of the company except that of a purely manufacturing character, which was conducted at Saltville. They keep there the general books of account, the books of record, the stock books. They had charge of the general course of the company's affairs and transacted its finances; collected the money and paid the bills. In fact, attended to all the business which generally comes under the conduct of a company's general office. This was done solely at Providence and nowhere else."

And he further testified that all of the goods of the corporation were sold at Providence. The affidavits filed by the defendants were as positive as the oral testimony. The order of the Circuit Court is, therefore,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.